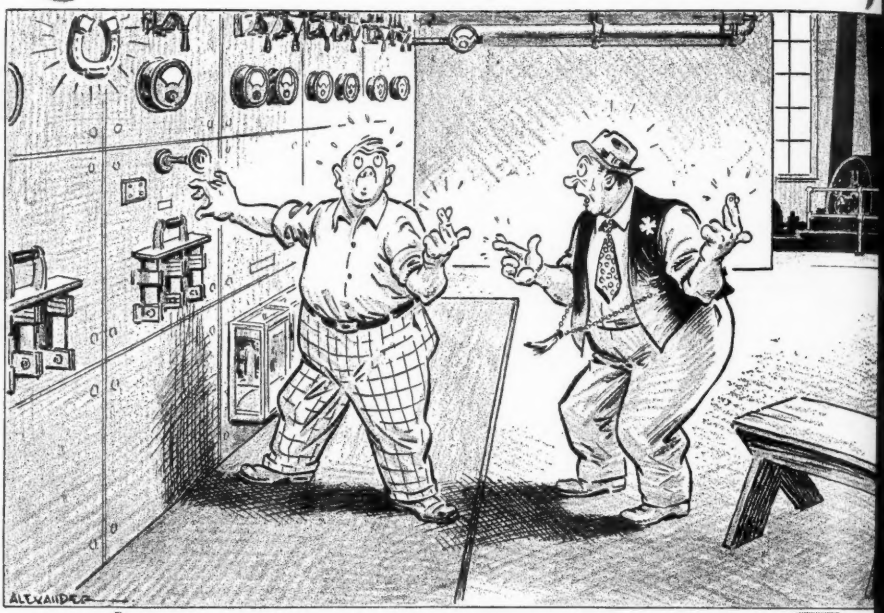
Public Utilities

FORTNIGHTLY

February 18, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

"CAREFUL, THERE!"



"I'M PRAYIN'! LET'ER GO, MALCOLM!"

Fortunately, in many industrial and public utility plants, safe, modern, I-T-E switchboards have replaced old, hazardous types. For the I-T-E boards, Malcolm needs no aid from good-luck charms.

I-T-E

AIR SWITCHGEAR

IMMERSED IN AIR — ENCASED IN STEEL

ARMY E NAVY

I-T-E

CIRCUIT BREAKER CO., PHILADELPHIA, PA.

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Public Utilities Fortnightly

VOLUME XXXI *February 18, 1943* NUMBER 4

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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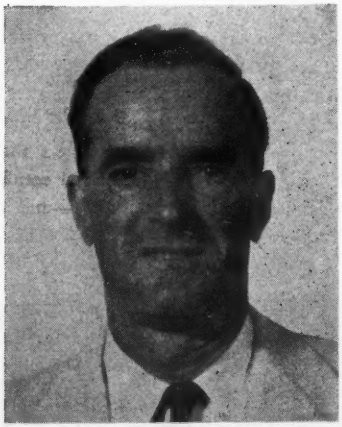
Pages with the Editors

WE received the recent news of the appointment of a WPB "czar" for the utilities with some surprise and a soupçon of gratification. We were not so much surprised at the actual elevation of J. A. "Cap" Krug to the post of the Office of Power Director. The past record of Mr. Krug in handling the old WPB Power Branch almost admitted of no other choice. It was just as "natural" a selection as the appointment of Joseph B. Eastman to be "czar" of war transportation, or the selection of Notre Dame's Elmer Layden to be "czar" of professional football.

THE surprise consisted in the recognition (belated, but still welcome) given by the administration to the vitally essential character of the war service rendered by public utilities —all of them: gas, electric, waterworks, and communications. We understand that Mr. Krug now has authority to stand up and talk on equal terms with other "czars" within WPB on the subject of scarce materials. (That would include the respective "czars" for Army, Navy, Lend-lease, and the rubber "czar," Mr. Jeffers.)

IF we know our Mr. Krug, he is just the able and aggressive gentleman to do that very thing. Indeed, rumor has it that WPB Chief Nelson, by his recent directive establishing the Office of Power Director, had in mind the arming of Mr. Krug with certain weapons of authority to speak up to certain other "czars" *outside* the realm of WPB, notably Secretary of Interior Ickes. Mr. Ickes, for obvious reasons, wants more steel for pipe lines to carry petroleum fuel next winter. Mr. Krug has the responsibility of looking out for additional pipe-line transportation for natural gas. There is likely to be a certain amount of "negotiation," to put it mildly, before the issue is settled. We could think of no one to represent the requirements of utility service as well as Mr. Krug when talking over the same table with the redoubtable Mr. Ickes.

© Harris & Ewing
J. A. KRUG



ALFRED V. ROBERTS
Sinking-fund depreciation accounting is more attractive than practical.
(SEE PAGE 207)

THERE is something about this conflict of the various "czars" for critical material which is quite fascinating—aside from the obvious importance of making the right decision in the allocation of scarce material during this critical period of our history. Mr. Nelson apparently has developed the very ingenious idea of elevating about a half-dozen of the more important claimants for materials to an equal rank for purposes of argument. Then, the plan seems to be to let them battle it out

among themselves. The resulting compromises are likely to be more equitable and sound than the old system of having dozens of independent industrial divisions jockeying in a free competition for a limited supply of raw materials. (See page 239.)

WHAT gratifies us in particular about this new "czar" idea is the combination, for the first time under a unified control, of WPB jurisdiction of all utilities. Heretofore, communications industries have had to struggle along with a separate division—for a considerable period in association with the nonutility and somewhat alien radio industry. But now, when Mr. Krug speaks, he speaks for every member of our *own* family—meaning, the readers of PUBLIC UTILITIES FORTNIGHTLY, which is the only magazine of national circulation which deals, at one and the same time, with the problems of all of the utilities, including gas, electric, waterworks, telephone, and telegraph companies.

So, we salute Mr. Krug as the new "czar" of our particular domain. We cannot conscientiously wish him a long reign, since that would be tantamount to wishing for a long war. But we are confident that he will bring to this exalted post in the history of American public service, the splendid capability which has characterized his performance to date. We venture to hope that out of this "duration" experience there may grow up a spirit of better coöperation and understanding among the various members of the public utility family. We hope something of that spirit will endure in the troubled years of reconstruction ahead.

INDEED, one of the silver linings of the war has been the demonstration that, as in every other field of human endeavor, there is strength in industrial unity. All of the utilities have now been through their respective baptisms of fire and have grown wiser and stronger for it. There is no longer any sound reason why they should not come closer together on problems of mutual concern.

WE are inclined to agree, however, with a minor dissent on the part of some communications men with respect to the title of Mr. Krug's new office. As "Power Director" it would seem, superficially at least, to relegate the other utilities to second-fiddle positions. This could never have been the original intent of Mr. Nelson, nor the present purpose of Mr. Krug. As an alternative, we suggest the "Office of Utilities Director," or at least "Office of Power and Communications Director." For downright poetical euphony, we might also suggest "Office of the Director of Public Service." But maybe some of the other "czars" would think that was taking in too much territory.

JOSEPH E. CONLON, whose article on "Jersey's Staggered-hour plan" begins on page 201,

WILL M. MAUPIN

Is Nebraska a regulatory no man's land?

(SEE PAGE 220)

is president of the New Jersey Board of Public Utility Commissioners. He was also chairman of Governor Edison's Emergency Water Supply Commission, state of New Jersey, which completed its task of planning emergency interconnections for municipal water systems in the record time of sixty days. Governor Edison has again called upon CONLON for "emergency war duties" by appointing him coördinator of transportation for the state of New Jersey. Before entering the field of public utility regulation, MR. CONLON served as first assistant prosecutor of Essex county from 1933 to 1941.

OTHER contributors in this issue include ALFRED V. ROBERTS of the engineering staff of the public utilities commission of Hawaii; FRANK M. PATTERSON, well-known consulting engineer of Chicago; and WILL M. MAUPIN, editor of the *Clay County* (Nebraska) *Sun*, and former member of the Nebraska State Railway Commission. We are tempted to add, with respect to MR. MAUPIN, a note of consolatory congratulations on the fine losing race he made last November for reëlection as a member of the Nebraska board. In the face of an overwhelming Republican landslide, MR. MAUPIN, an old-fashioned grass-roots Democrat, ran away ahead of his entire state ticket. We are sure his victorious Republican opponent will agree with us that this is an exceptional personal tribute.

THE next number of this magazine will be out March 4th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193–256, from 46 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

CHESTER J. LAROCHE
Chairman, The Advertising Council, Inc.

"In total war everybody must buy abnormally, give abnormally, and live abnormally."

H. W. PRENTIS, JR.
President, Armstrong Cork Company.

"Economic abundance, personal security, never wet-nursed any people into freedom."

EDITORIAL STATEMENT
Electrical World.

"Public ownership is no longer popular with the public, nor with labor. The utilities have new allies today."

EDITORIAL STATEMENT
Nation's Business.

"When a servant of the people gets to running around with a ceiling in his hands, he just has to find some place to put it, it seems."

DAVID E. LILIENTHAL
Chairman, Tennessee Valley Authority.

"I don't recommend certain kinds of criticism that we [TVA] have had to absorb, and yet the net effect of all of it has been to put the whole TVA organization upon its mettle."

THOMAS J. SHANLEY
Statistician, American Gas Association.

"Gas cooking is a 10-to-1 favorite over electricity in America's 27,747,973 urban and suburban homes according to a study of the first housing survey made by the Bureau of Census."

HARRY H. WOODRING
Former Secretary of War.

"I believe the American people in overwhelming majority want state and individual rights restored, that they want their liberties determined by free courts and not by boards and commissions. Those, in my opinion, should be cardinal principles of our [suggested new] Commonwealth party."

WENDELL L. WILLKIE
Former president, Commonwealth & Southern Corporation.

"The Four Freedoms will not be accomplished by the declarations of those momentarily in power. They will become real only if the people of the world forge them into actuality. And political internationalism alone will not accomplish them. Real freedom must rest on economic internationalism."

EDITORIAL STATEMENT
The Wall Street Journal.

"Speculation is not a prime factor in delaying railroad reorganizations. Still less is it threatening to do the impossible by forcing changes in recapitalization plans against the public interest, which remains in the powerful guardianship of the [Interstate Commerce] Commission and the courts."

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★ FOR VICTORY—BUY UNITED STATES WAR BONDS AND STAMPS ★

JAMES F. BYRNES
Director of Economic Stabilization.

". . . now that we are getting down to organizing our home front for the prosecution of the war, I think we should avoid, as far as possible, theoretical terms like 'inflation' and 'stabilization,' and we should consider the very concrete problems which we have to meet."

HENRY MORGENTHAU
Secretary of the Treasury.

"We who fight the war have also the duty of paying for the war. These costs are unescapable. No sleight-of-hand can transfer goods and services from the future to the present. And no debt that we might pile up for the future can reduce the sacrifices in goods and services we must make today."

B. C. FORBES
Editor, Forbes.

"As I analyze it, the nations which have achieved the greatest progress during the last two-three generations are the ones which have produced the largest number of wealthy men, and that where no or very few millionaires have appeared ordinary people have been worse off than in more enterprising lands."

COLONEL E. C. R. LASHER
Deputy chief, Traffic Control Division, Army Transportation Corps.

"A year ago we [railroads] were being asked to move about two hundred thousand men and their equipment a month. Today it's about two million a month. Don't forget either that when a soldier moves, all his equipment has to go with him so that he can dress himself, eat, drill, and, if necessary, fight at a moment's notice."

CARL W. ACKERMAN
Dean, Columbia University.

"Sometimes I think we need most of all in our own country today more conscientious objectors—not conscientious objectors to military service, but men and women with conscientious allegiance to our inalienable rights, men and women who are prepared and unafraid to register their objections to the freezing of public speech, the freezing of public assembly, of the press, and of the radio."

MERLE THORPE
Editor, Nation's Business.

"It was General Somervell, chief of Services of Supply, who said that 'when Hitler put his war on wheels, he ran it right down our alley!' The wheels of American industry are singing a high, clear, confident note—the wheels of aviation, of motor vehicles, of railroad trains and shipbuilding plants, of communications and power and light and machine tools, of steel and aluminum, of mines and oil fields."

THURMAN ARNOLD
Assistant Attorney General of the United States.

"The United States entered the war with a wavering faith in our own institutions. Many of us had come to believe that it was impossible for our industrial democracy to distribute the wealth of the nation. For years we had been exploited by a few groups who eliminated new enterprise in order to preserve their own domination. The savings of modern invention and modern organization were not passed on to the consumer."

R&IE HI-PRESSURE CONTACT *Switching Equipment*

VING THE ARTERIES OF INDUSTRY

Now, when War Production makes prior claim to the manufacturer's output, is the time to seek quality and service as never before.

It's good business—Patriotic business—to demand the maximum service from available raw materials.

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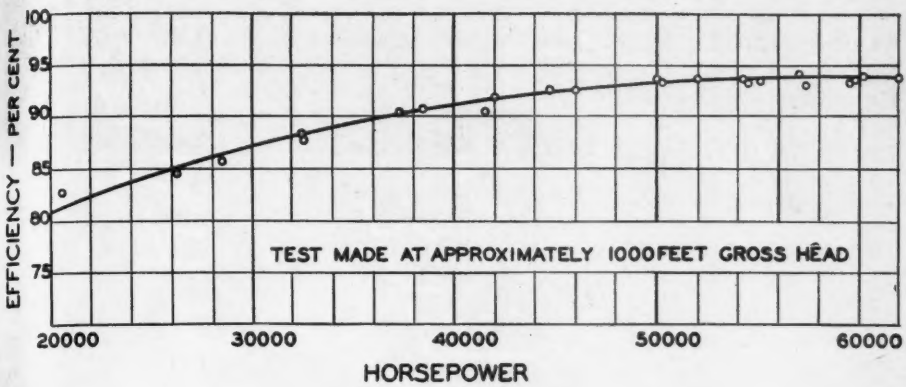
AILWAY *and* INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating 100% with the War Effort



FIELD TEST CURVE

for

60,000 H.P.—925′ NET HEAD—450 R.P.M.

VERTICAL FRANCIS TURBINE

Built by

Newport News Shipbuilding and Dry Dock Company

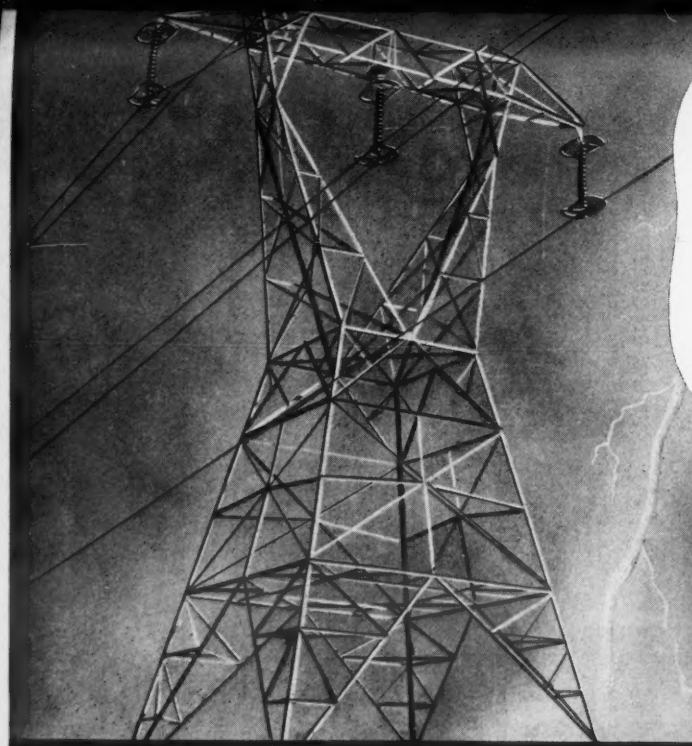
(Hydraulic Turbine Division)

Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.

"Fair-Weather" Power Highways Won't Do.

When power fails, production grinds to a stop.



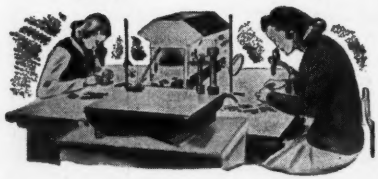
When power fails, production grinds to a stop. Important in the dependable delivery of power are the transmission towers that support the power lines. Not surprising, therefore, that operating engineers everywhere turn to Blaw-Knox transmission towers. Engineered into them is the satisfying certainty that they will not only make a good appearance during fair weather, but that they will withstand the stresses of storm, flood and frost. Because they are correctly designed, fabricated and galvanized, their maintenance cost is extremely low. A discussion is invited with regard to any power transmission problem.

BLAW-KNOX TRANSMISSION TOWERS

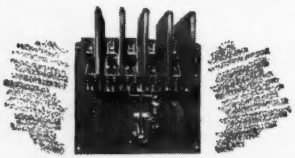
BLAW-KNOX DIVISION OF BLAW-KNOX COMPANY 2013 FARMERS BANK BUILDING, PITTSBURGH, PA.
NEW YORK • CHICAGO • PHILADELPHIA • BIRMINGHAM

Electrical Ideas in Action!

HELPING TO MEET AMERICA'S WARTIME NEEDS



MICROSCOPIC FLAWS on metal surfaces are more easily detected when inspection is carried out under sodium light, according to recent experiments in the G-E Illuminating Laboratory. The explanation lies in the monochromatic quality of the light, which permits a sharper eye-focus because the light is all of the same wave length. In addition, the yellow wave band falls in the region of maximum eye sensitivity.



THE ARC-BACK PROBLEM, in circuits where one or more mercury-arc rectifiers are employed, is being successfully met with this new G-E air circuit breaker (Type AG-1). Use of the new breaker lessens the possibility of power interruptions where direct current is used for purposes such as the manufacture of aluminum and other electrochemical processes. A high-speed current directional trip starts the action of the breaker in less than one-half cycle.

MEASUREMENT OF THE "CREEP" o metals, an operation which formerly re quired constant observation of the meta sample under test through a microscope is now done automatically by an electroni device—at the General Electric Researc Laboratory. An "electric eye" watche the interruptions of a light beam, make it possible to measure an extension of wire sample as small as 1/10,000 of a inch while it is being heated in a glas cylinder.

YOUR ENGINEERS serving industry an other users of electric energy have an im portant war job to do in helping to mak the most of our power resources. Electrica ideas such as these, though sometime minor in themselves, can add up BIG whe widely applied—frequently saving energy man power, and critical materials. Genera Electric is ready to assist in the cause o conservation by supplying further informa tion or application aid wherever better elec trical utilization can help to win the wa

General Electric, Schenectady, N. Y.

The Army-Navy "E", for Excellence in the manufacture of war equipment, now flies over six G-E plants employing 100,000 men and women.

GENERAL ELECTRIC

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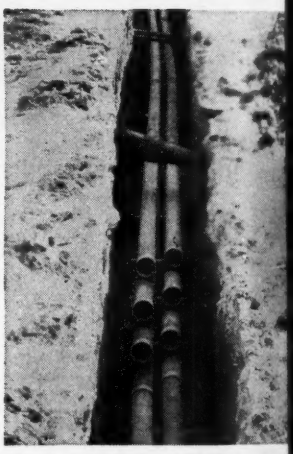
TRANSITE DUCTS BOOST SYSTEM CAPACITY!

High Thermal Conductivity of Johns-Manville Transite Ducts dissipate heat more quickly . . . either cut copper losses or increases capacity

CABLE OPERATION is improved wherever Transite Ducts are used. Made of asbestos and cement, they provide a high rate of heat dissipation. This means increased system capacity or lower cable-operating temperatures with resultant decreased insulation and I^2R losses and longer cable life.

What's more, you spend less on upkeep, for Transite Ducts can't rust, rot or burn. They effectively resist corrosion and do not soften, swell or blister. Their smooth bore *stays* smooth . . . makes cable removal and replacement as easy as initial installation. And because Transite Ducts come in long, light lengths with a complete line of fittings, jobs are finished quickly and economically. For details, write for brochure DS-410. Johns-Manville, 22 E. 40th St., New York, N. Y.



Because J-M Transite Ducts are made of asbestos and cement, less separation is required for effective heat dissipation and fire protection between cables.

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Johns-Manville TRANSITE DUCTS

TRANSITE CONDUIT... For use underground without a concrete envelope and for exposed locations.

TRANSITE KORDUCT... For installation in concrete. Thinner walled, lower priced, but otherwise identical with Transite Conduit.

STEPPING STONES TO VICTORY

EACH landing we make, every enemy position we capture, is a stepping stone toward victory. But remember, the men who tread this path need backing from all of us at home.

The least that can be done to back them up is to help conserve essential material by making our storage batteries last as long as possible—regardless of the service in which they are used. The "stepping stones" at the right will help you get from your Exides all the long life that we build into them.

THE ELECTRIC STORAGE BATTERY CO.
The World's Largest Manufacturers of Storage Batteries for Every Purpose
PHILADELPHIA
Exide Batteries of Canada, Limited, Toronto

FIRST STEPPING STONE: Add approved wat at regular intervals.

SECOND STEPPING STONE: Keep batteries cle and dry. Wash off tops with a solution of e pound of bicarbonate of soda to one gallon water; rinse and dry thoroughly.

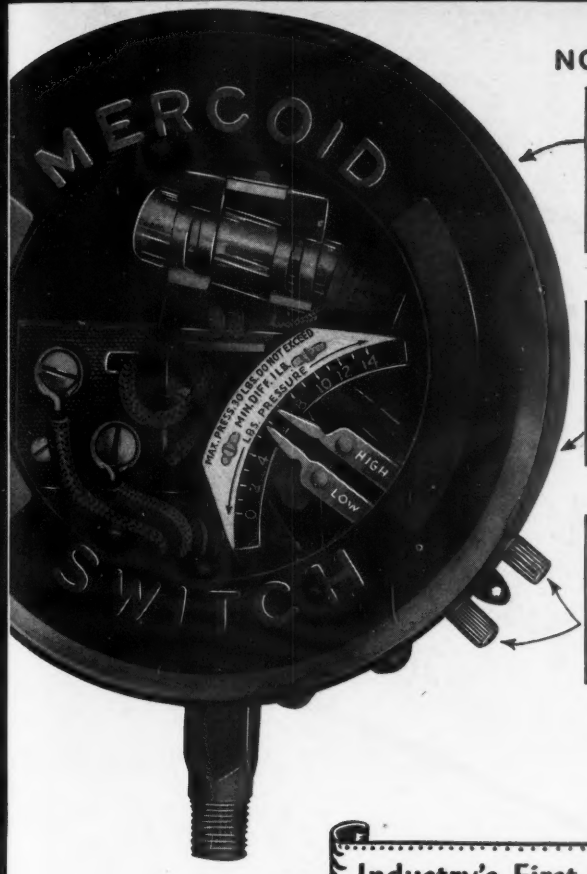
THIRD STEPPING STONE: Keep batteries fu charged—but avoid excessive over-charge.

FOURTH STEPPING STONE: Keep written recor of water additions, voltage, and gravity readin for comparisons as batteries grow older.

Write for further information, stating battery application in which you are interested. We will be glad to help you with any special battery maintenance problem confronting you.

Exide
BATTERIES

DA CONTROLS



NOTE THE FEATURES

The Mercoid mercury switch. Immune to dust, dirt and corrosion—a distinctive and exclusive feature in all Mercoid Controls. It provides an electrical contact designed for millions of perfect operations.

A Bourdon tube element actuates the switch. (Located back of cover, not visible on this photograph.) Long established as a dependable power element. A wide range of types to fit the service for which required.

Don't overlook this one. The outside double adjustment. Simple to set at desired operating points. Direct reading of setting eliminates calculations—an important factor considering the newly trained workers in all plants.

Industry's First Choice for accuracy and dependableness in temperature or pressure controls

The illustrated control is but one of many instruments developed and manufactured by Mercoid. Among others are Air Conditioning Controls ☆ Combination Pressure and Low Water ☆ Boiler Feed Water Pump Control ☆ Explosion-Proof Controls ☆ Float Controls ☆ Gas Pilot Control ☆ Industrial Type Liquid Level Control ☆ Lever Arm Control ☆ Oil Burner Controls ☆ Oven Temperature Controls ☆ Limit Controls ☆ Refrigeration Controls ☆ Transformer-Relays ☆ Stoker Controls ☆ Thermostats ☆ Unit Heater Controls ☆ Vapor Vacuum Controls ☆ Visaflame (Light operated Control) ☆ Mercury Switches.

If you have a control problem, let Mercoid engineers give you the benefit of their wide experience.

The Mercoid DA Control has attained universal use throughout industry.

Adaptable as it is to a wide range of applications and available in a variety of types, it is immediately considered wherever accurate control of pressure and temperature is necessary.

Many years of experience and engineering development are built into the Mercoid DA Control. It has become and will continue to be a symbol of instrument dependability.

NEW CATALOG IS IN PROCESS OF COMPLETION. YOUR REQUEST FOR A COPY NOW WILL RECEIVE FIRST CONSIDERATION.

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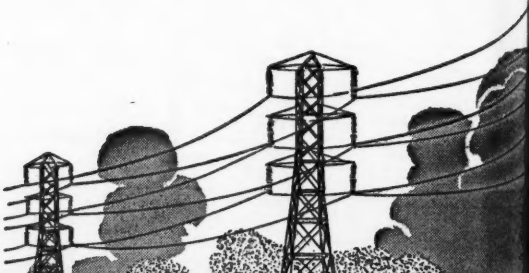
THE MERCOID CORPORATION ☆ 4210 BELMONT AVE. ☆ CHICAGO, ILL.

Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews

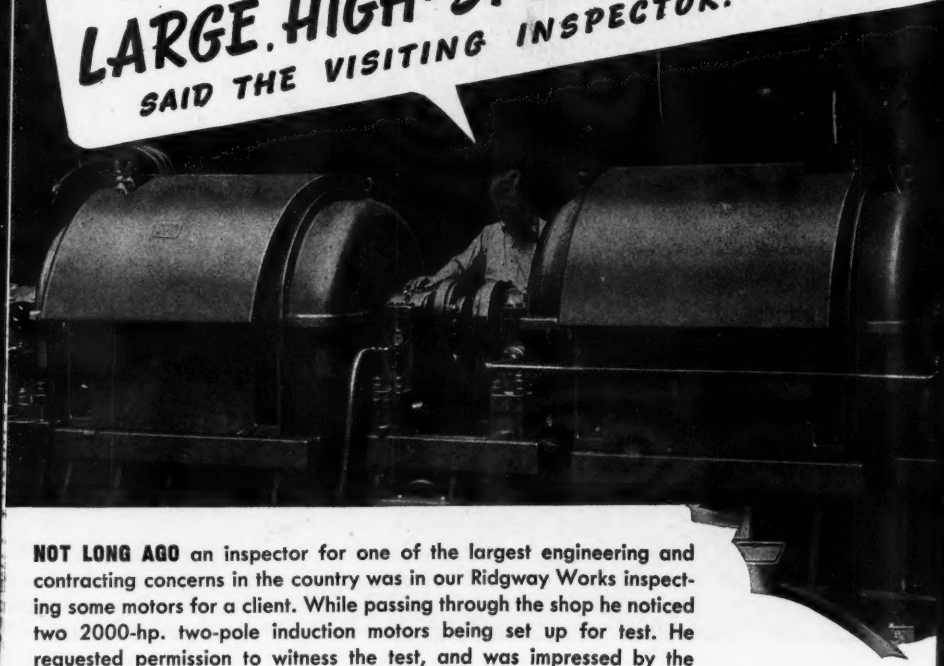


HOOSIER ENGINEERING COMPANY

CHICAGO 46 SO. 5TH ST., COLUMBUS, OHIO NEW YORK

ERECTORS OF TRANSMISSION LINES

"ELLIOTT COMPANY CERTAINLY KNOWS HOW TO BUILD LARGE, HIGH-SPEED MOTORS!" SAID THE VISITING INSPECTOR.



NOT LONG AGO an inspector for one of the largest engineering and contracting concerns in the country was in our Ridgway Works inspecting some motors for a client. While passing through the shop he noticed two 2000-hp. two-pole induction motors being set up for test. He requested permission to witness the test, and was impressed by the outstanding performance of the motors.

Soon afterwards his company ordered three Elliott 800-hp. two-pole motors for a utility plant. Their operation was so satisfactory that we have since built for this same utility plant three 1750-hp. two-pole motors, like those illustrated above.

This is not the first time an inspector has been unusually impressed with the two-pole induction motors we build in Ridgway. In fact the word has passed around that we "know our stuff" on large high-speed motors. You will find lots of them driving boiler-feed and other pumps, particularly in utility plants — and doing an excellent job on it.

Elliott Company engineers have the experience and "know how" on this type of motor. They have been building them with unusual success for 25 years.

•

Elliott motors of this type have pressure lubrication from a built-in unit. Stator frames are cast or welded steel, as desired. Large ventilating channels and ducts in shell and stator core insure cool, quiet operation. Structural design provides unusually high strength and rigidity at high speeds. Descriptive bulletin on request.

ELLIOTT COMPANY

Electric Power Dept.

RIDGWAY, PA.

DISTRICT OFFICES IN PRINCIPAL CITIES

Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

February

18	Th	¶ *American Institute of Mining and Metallurgical Engineers ends annual meeting, 1943.*
19	F	¶ *Pennsylvania State Association of Boroughs will convene, Harrisburg, Pa., Feb., 1943.*
20	Sa	¶ *American Gas Association Industrial and Commercial Gas Conference will be held, Detroit, Mich., Mar. 11, 12, 1943.*
21	S	¶ *Nebraska Telephone Association will hold convention, Lincoln, Neb., Apr. 6, 7, 1943.*
22	M	¶ *American Water Works Association, Canadian Section, will hold session, Hamilton, Ont., Can., Apr. 7–9, 1943.*
23	Tu	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 9, 10, 1943.*
24	W	¶ *Iowa Independent Telephone Association will hold convention, Des Moines, Iowa, Apr. 13–15, 1943.*
25	Th	¶ *Illinois Telephone Association will hold meeting, Chicago, Ill., Apr. 20, 21, 1943.*
26	F	¶ *United States Independent Telephone Association will convene, Chicago, Ill., Apr. 22, 23, 1943.*
27	Sa	¶ *Missouri Association of Public Utilities will convene, Excelsior Springs, Mo., Apr. 23, 24, 1943.*
28	S	¶ *Ohio Independent Telephone Association will hold meeting, Columbus, Ohio, Apr. 27–29, 1943.*

March

1	M	¶ *American Society for Testing Materials opens spring meeting, Buffalo, N. Y., 1943.*
2	Tu	¶ *American Water Works Association, Pacific Northwest Section, will hold meeting, Bellingham, Wash., May 7, 8, 1943.*
3	W	¶ *National Fire Protection Association will convene for session, Chicago, Ill., May 17, 1943.*

Courtesy, General Electric Company

Power for War

Public Utilities
FORTNIGHTLY

VOL. XXXI; No. 4 FEBRUARY 18, 1943

Jersey's Staggered-hour Plan

It involves a procedure which differs from that which has been followed in most other states in that it is administered by directive order, rather than by the state transportation committee itself, upon a mutual coöperative basis.

BY JOSEPH E. CONLON
PRESIDENT, NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS AND STATE COORDINATOR OF TRANSPORTATION

IN no field of public utility activity has the war brought greater change than in the field of rubber-borne transportation. It was apparent soon after Pearl Harbor that supplies of crude rubber would no longer be available. If the use of motor bus, truck, and private automobile was to be continued, economies in the operation of such vehicles would be necessary to "stretch the rubber" for at least two years.

Ways and means of accomplishing the greater use of available bus equipment was of national concern, particularly in view of prospective increase in the use of surface transit facilities. It was apparent that the enlargement of public transportation services had reached the limit of available equipment and that the manufacture of new equipment in any substantial quantity could not be anticipated. Therefore, it seemed that the most effective solution of the problem was to initiate the staggering of school hours, the working hours of industrial and business establishments, and the coördination of public transportation facilities. Otherwise there was sure to be a transporta-

tion crisis which would definitely interfere with the uninterrupted production of war materials.

Joseph B. Eastman, Director of Transportation, requested each of the governors of the several states to appoint a war transportation committee. Such a committee was appointed by Governor Charles Edison of New Jersey on April 24, 1942. It was given the responsibility of conducting studies of the worker transportation problem and, on the basis of such studies, to formulate recommendations to be placed into effect by the responsible authorities. As its major objective, the committee aimed to make it possible for people to be transported to and from their places of employment by increasing the efficiency of the available transportation facilities and by conserving the usefulness of these facilities.

Serving on the committee are representatives of labor, industry, the transportation companies, the state public utility commission, the state planning board, and the general public. It is utilizing the services of a staff drawn from the state motor vehicle department, the state planning board, and the New Jersey State Chamber of Commerce.

THE war transportation committee proceeded to make its investigations and worked intensively for several months. On September 15, 1942, it filed a detailed report with the governor, containing its recommendations as to the staggering of hours and also recommending that the governor appoint a coördinator to administer the recommendations of the committee. This procedure differed from that which has been followed in most of the states where the imposition of staggered hours has been controlled by the transportation committee itself and has been adopted upon a mutual coöperative basis and not by directive order. The thought which prompted the committee to recommend the appointment of a coördinator and to make the directive orders binding upon those to whom they were directed was not because they feared any lack of coöperation from the public but rather because they felt that when the public is called upon to make sacrifices and incur inconveniences to further the war effort, they are entitled to know that they are taking part in a uniform movement that will accomplish a well-planned objective.

On September 24th Governor Edison issued an executive order appointing a coördinator for the state and directing all agencies of the state, county, and municipal governments, as well as all employers and employees, and the general public, to coöperate fully in the coördinated transportation program.

In the very beginning it seemed necessary to enunciate a clear expression of policy and upon instituting the office of coördinator of transportation it was announced:

> It will not be the province of any individual or agency to appraise the comparative benefits and inconveniences suffered. In order to make this plan effective it must be universal. If once we make exceptions to the rules because of shades of resulting benefits and inconveniences we will have nothing but chaos. Therefore, any person or agency seeking an exception on the ground that the benefits do not justify the inconveniences will be considered as noncoöperative and treated accordingly.

ACTING in accordance with the direction of Governor Edison's execu-

Transportation of Additional War Laborers

"THE Office of the New Jersey Director, United States Employment Service, estimates that the demands for additional labor for the remainder of the year will equal from 100,000 to 120,000 war labor employees. Public transportation facilities will be required for a large portion of these new workers. Today the state's busses and trolleys and trains are carrying daily one million more passengers than at this time a year ago."

tive order, I found that the New Jersey War Transportation Committee had obtained such reliable factual information and had arrived at such sound conclusions that I could rely upon the committee without further study for the issuance of directive orders as coördinator of transportation.

Conferences with representatives of management and labor had been held in many cities and the problem of adjusting the regular working hours of employees had been discussed in great detail. The opinion was often expressed, especially by representatives of labor, that if a staggering of hours was instituted, the so-called nonessential industrial and business organizations—those not primarily concerned with war work—should be compelled to change their hours in such a manner as to eliminate conflict with the working hours of war workers and thereby release space in transit facilities to essential war workers. Such an expression definitely identifies the main objective to be obtained in the adoption of any staggering-of-hours plan.

Without delay, I have proceeded to accept the recommendations of the New Jersey War Transportation Committee and have caused to be issued a series of directive orders, some of which were to the following effect:

Directive Order No. 1 provided for the opening and closing hours of many of the public, parochial, and high schools throughout the state.

Directive Order No. 2 fixed the hours of retail businesses in the entire

business section of the city of Newark, providing that they should not open for business before 10 A.M. and should not close between 4 P.M. and 6 P.M.

Directive Order No. 3 changed the hours of seven insurance companies and other large employers in the city of Newark where employees were housed in one or more buildings in the business section. In one such instance 11,000 employees of one insurance company were affected.

Directive Order No. 4 fixed a zone in the business section of Trenton, New Jersey, and applied to retail businesses the direction that they shall not open their doors to the public for the start of business before 10 A.M. and shall close either before 4 P.M. or after 6 P.M.

Directive Order No. 5 applied to fourteen large industrial plants in Newark employing some 15,000 workers, so that these employees working on certain day shifts could begin and end their normal work day, not including overtime, at an hour when they would not be seeking transportation at the peak of the rush in the center of the city.

Directive Order No. 6 changed the hours of six of the larger plants in the city of Trenton so that advantage was taken of the previous change in store hours.

ALL of the directive orders contained a notation that any person affected might appeal therefrom to the war transportation committee. The appeals have not been numerous and have resulted either in an amendment to the directive order removing an inequity, or else in a decision by the appellant to abide by the original order.

After issuing these directive orders there was appointed a committee of three traffic experts who were requested to make observations in Newark and Trenton to learn the practical effect of the changed conditions brought about by the directive orders, and to adjust the regulations in accordance with their findings.

It is proposed to proceed with the issuance of other directive orders, if found necessary, in congested municipalities that are affected more particularly by the war effort. These cities include Paterson, Passaic, New Brunswick, and Camden.

There is in the process of completion by the war transportation committee a scientific origin and destination survey which, when finished, will give in voluminous detail the basis for more complete adjustment in the working schedules of business and industrial organizations. The questionnaires were distributed to plants in the state employing one hundred or more persons and the data to be shown thereon covers the origin and destination of the respective employees, method of travel, whether by private car, auto bus, train, or walking. Additional information is also being tabulated with respect to the use of private automobiles, which will include the estimated life of the tires and similar data. Some 800,000 questionnaires have been circulated.

SINCE the tabulation of these origin and destination checks required particular and special equipment, the New Jersey War Transportation Committee entered into an arrangement with the Prudential Life Insurance Company of Newark, which had the necessary equipment, to do this work.

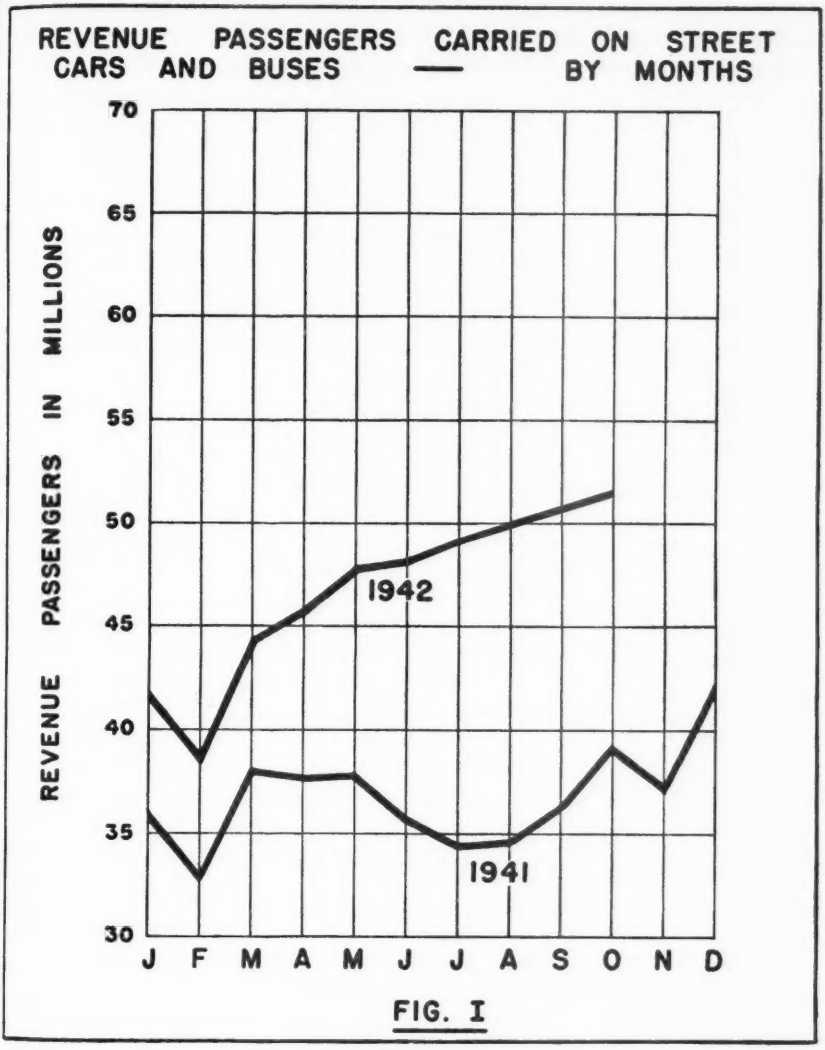


FIG. I

In a spirit of coöperation, employees of the Prudential agreed to undertake the tabulation by working overtime. The work was done under the supervision of experts in this field. Under the method adopted a system is worked out whereby data are key-punched on cards by the International Business Machines, which in the same operation will sort and segregate them in various categories as to origin and destination, and other data, enabling quick analysis.

This information when sorted, particularly as to the routes traveled by the individuals, will be set up in the aggregate and plotted on large-scale maps and then simulated with relation to existing transportation facilities.

The increase in labor demands by war industries in New Jersey because of expansion of existing plants and the construction and operation of new plants will require public transportation to carry still additional loads. The Office of the New Jersey Director, United States Employment Service, estimates that the demands for additional labor for the remainder of the year will equal from 100,000 to 120,000 war labor employees. Public transportation facilities will be required for a large portion of these new workers. Today the state's busses and trolleys and trains are carrying daily one million more passengers than at this time a year ago.[1]

CONSIDERING all of these facts, together with the trend of increase in riding during the first part of last year, indications were that public transportation facilities in New Jersey would be called upon to carry from 15 per cent to 20 per cent more people in the month of January, 1943, than in the month of January, 1942.

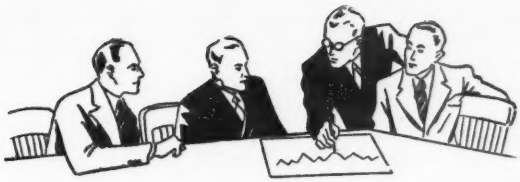
[1] See graph, "Revenue Passengers Carried on Street Cars and Busses by Months."

Another interesting phase of the entire program is the establishment of a tuition-free course in "Emergency War Transportation" initiated by the University of Newark in coöperation with the New Jersey War Transportation Committee. The University of Newark is offering an 8-week course designed to help war transportation administrators and representatives of industries in establishing sound war transportation systems within their respective fields. The course is held on two evenings a week from 7 to 10 P.M. and covers lectures and recitation hours which encompass the entire industrial war transportation problem with special emphasis on the transportation of industrial personnel to meet the existing emergency shortage of gasoline and tires.

It should be noted that the installation of the staggered-hour plan in New Jersey has involved the assistance to me of some of the best-informed minds in the state on the transportation problem. They have applied themselves without stint. The governor, in creating the office of coördinator of transportation, apparently assumed that voluntary patriotic work of this sort would be more efficient than work that was done by paid employees. Thus far the administration of the staggered-hour program has cost the state of New Jersey nothing.

Telegrams Sent in Gaelic

TELEGRAMS in Gaelic offer no difficulties to operators of the Canadian National Telegraphs in the Maritimes, because, to quote D. A. MacNeill, superintendent at Moncton, New Brunswick, most of them "have the Gaelic." Naturally, such messages must be written in the everyday characters of the English language. Gaelic is freely spoken throughout the sea-washed provinces, particularly in Cape Breton island where the Macs are as numerous as present-day Scots in the ancestral highlands.



Is Straight-line Depreciation More Realistic?

Using analytical charts to support his thesis, this author urges the adoption of the straight-line method of depreciation accounting as opposed to the sinking-fund method. He believes this treatment is not only more realistic but also more equitable and in harmony with the primary purpose of depreciation accounting.

By ALFRED V. ROBERTS

So much has been written on that hardy perennial problem of depreciation that almost any further article about it ought, perhaps, to approach the subject humbly if not apologetically. And, yet, as often happens in the case of a considerable accumulation of literature—and experience—the most hackneyed subject may be the very one in which the basic forest is overshadowed by a contemplation of the individual trees.

By way of attaining a fresh outlook, let us go back just for a quick check on the regulatory treatment of depreciation as it has developed. Up until some thirty-odd years ago, the highest court in the land failed to recognize depreciation as an operating expense! Yet, this did not alter the fact that it was taking place day by day, month by month, and year by year.

A primary function of any regulatory body is to simulate, as nearly as possible, competitive business conditions. That private industry generally has adequately met this wastage of depreciation by some means is apparent; otherwise, all industry in the past would inevitably have been bankrupt. We know that in these early days, the ravages of depreciation were taken care of as and when they physically presented themselves. They were taken care of much as we, today, take care of maintenances — directly, by replacement or retirement.

The replacement or retirement method of caring for depreciation had one drawback. This drawback arose from the fact that there exist two basically different types of property—that is, different in so far as depreciation problems are concerned. These are:

1. The property account consisting of, perhaps, a single, large unit.

2. The property account comprising a multiplicity of small, similar units.

FAILURE to keep this distinction in mind has resulted in much confusion and argument at cross purposes. Both types have been thrown into the common depreciation bag without separate identification tags.

In the old days, as units kicked out they were replaced from current funds. An estimate was made of their total, anticipated, annual volume—just as today an estimate is made of the total, anticipated, yearly volume of maintenance.

Commodity charges were adjusted accordingly.

In general, this worked quite satisfactorily for those accounts comprising a multiplicity of small, similar units. But amongst the properties of most companies are also some large units, such as buildings. This type of property is normally retired because of inadequacy or obsolescence. It happens at long intervals—often at very long intervals.

The expense that is involved may be enormous. Thus, whereas that property, consisting of many small similar units, sets a uniform annual retirement pattern, the single large property unit is retired at irregular intervals with embarrassing financial impact.

Were it not for this latter type of property—the single large unit—depreciation accounting would, most probably, never have come into being. It was the embarrassment encountered by the irregular retirement of the large unit, involving a very large replacement outlay, which demanded more precise accounting.

DEPRECIATION accounting provides for the amortization of property by contributions to a depreciation reserve account, throughout the lifetime of the unit. Thus, if the estimated life is correct, at the retirement of the particular property unit in question the funds will be available for its replacement. In this way, no embarrassment is experienced by the company, the load having been spread over the life of the property.

Thus a company could, perhaps to advantage, have instituted a dual system of accounting in caring for the loss of service value in its various property units. The treatment of small units could have satisfactorily continued on the old basis. For one or two large units, it could have adopted depreciation accounting.

But that is not the way the problem was treated. Depreciation accounting, generally, has been applied to *all* accounts. Those accounts consisting of many small units are handled through the use of an "average" life. The annuity applicable to this average life is applied until the last of the property units in the group has been retired. Thus, the underaccrual on those units surviving less than average life, is made up by overaccrual on those units which survive longer than average life.

SUPPOSE a property account, composed of thousands of small units, were given an average life of twenty years. Under straight-line accounting, each year thereafter, 5 per cent of the value of surviving property would be credited to the depreciation reserve until the last unit has been retired. Somewhat similarly, in the case of a property account consisting of a single large

unit, a life of forty years might be given. In this case, 2.5 per cent of the original cost of the unit would be credited to depreciation reserve each year.

When depreciation accounting was first instituted, the depreciation annuity was based on the straight-line theory. The straight-line theory of depreciation accounting provides for the loss of service value suffered by a property, on a uniform straight-line basis.

Later was introduced the sinking-fund method of depreciation accounting. By this method the total, annual depreciation charges—annuity plus interest—plot up, not on a straight line, but on a curve. This is illustrated in Chart I.

To save exhaustive computations, Chart I is based on the assumption of a single unit costing $100 with a life of ten years. Referring to this chart, it will be seen that under straight-line depreciation the depreciation expense is uniformly $10 annually. By the sinking-fund method of depreciation, the annual depreciation expense varies from a minimum of $7.95 the first year, to $12.34 for the last year. Total ultimate accrual by either method is the same—$100. Chart II shows accrued depreciation by years, under straight-line and 5 per cent sinking-fund depreciation, for the preceding example. (See page 211.)

HERE are two advantages generally claimed for the sinking-fund method:

1. That annual depreciation expenses under the sinking-fund method

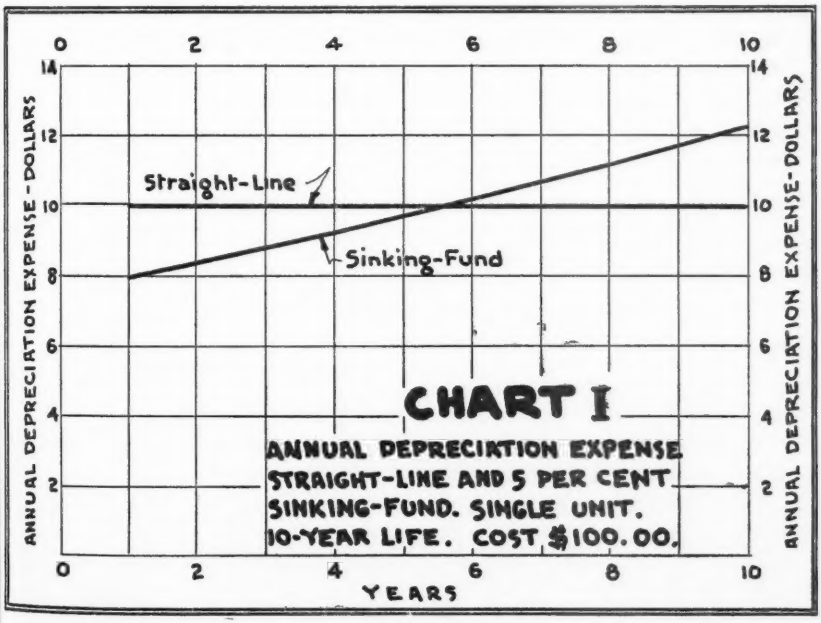


TABLE I

(Supporting Charts I & II)

ANNUAL DEPRECIATION EXPENSES UNDER STRAIGHT LINE AND 5 PER CENT SINKING FUND. SINGLE UNIT. LIFE TEN YEARS. COST $100

	Straight Line		*5 Per Cent Sinking Fund*	
	Annuity	*Reserve*	*Annuity*	*Reserve*
Years	(10.0%)		(7.950458%)	
1	$10.00	$10.00	$7.95	$7.95
2	10.00	20.00	8.35	16.30
3	10.00	30.00	8.76	25.06
4	10.00	40.00	9.21	34.27
5	10.00	50.00	9.66	43.93
6	10.00	60.00	10.15	54.08
7	10.00	70.00	10.65	64.73
8	10.00	80.00	11.19	75.92
9	10.00	90.00	11.74	87.66
10	10.00	100.00	12.34	100.00

more nearly conform to the actual rate at which a property depreciates.

2. That, under the sinking-fund method, annual contributions to depreciation expense are less than under straight-line accounting.

Referring to Chart I, just why we should assume that the annual loss of service value, in the case of a single large unit of property, corresponds to that shown by the sinking-fund method is difficult to explain. Perhaps it cannot be explained? After all, the history of the case is merely the accounting expediency of spreading such an irregular and embarrassingly large financial load as uniformly as possible over the long service life of the property. The annual rate at which such loss of service value actually takes place seems quite immaterial. *Actually, the annual losses, in the case of a single large unit, are fictitious.* They can be anything we wish to make them; there is nothing mathematical about it. It is simply a question of financial expediency. Chart I shows that, for this type of property, the straight-line method distributes the load uniformly over the life of the property; and this, after all, it will be remembered, was historically the goal sought.

THUS far, we have considered only that type of property listed under item (1)—the large, single property unit. Now, what about that type of property listed under item (2)—the account comprising a multiplicity of small, similar units. Historically, this type of property caused no embarrassment. But, today, we have plenty of embarrassment. Why? Because we apply depreciation accounting to this type of property, also. We give to it an "average life" and then apply depreciation accounting on either the straight-line or the sinking-fund basis.

Herein, perhaps, lies our greatest confusion. This average life is the average life of the group. The life of some units may exactly equal this average life; or it may be that no unit will have a life corresponding to it. Its "average life" is necessarily a fictitious life. It is, primarily, not a "life" at all, but an "average." The overwhelming majority of the units have a life

either shorter or longer than average.

The property account, comprising a multiplicity of small units, poses a different problem from that of a single unit which stays in service until the day it is retired—and then goes out completely. A percentage of the property, represented by such an account, actually is retired from service each year. Some is removed because of physical deterioration; some, for functional or other reasons. But actual units of property are definitely removed; that is the point. It is a physical fact. The pattern is dictated by the caprice of life. For this type of property account we cannot, as with the large single property unit, theorize as to the annual rate of service loss. Our task is merely to ascertain the factual rate of retirement taking place.

An account quite representative of this latter type of property is a pole account. Chart III shows a study of a typical "Distribution Poles" account.

The study on which this chart is based was made in July, 1942. It is compiled from the actual mortality data of approximately 34,000 poles. It is not pertinent to this study to examine the technique by which this curve was derived. Suffice it to say that the survivor curve here shown is typical of all pole accounts. Such curves are always in the general form of a reverse curve. The survivor curve shown in Chart III is what is known as a standard "R2-15-year" curve. The "R2" is the designation of the type of curve. It means that the "mode" or maximum rate of retirement comes to the right

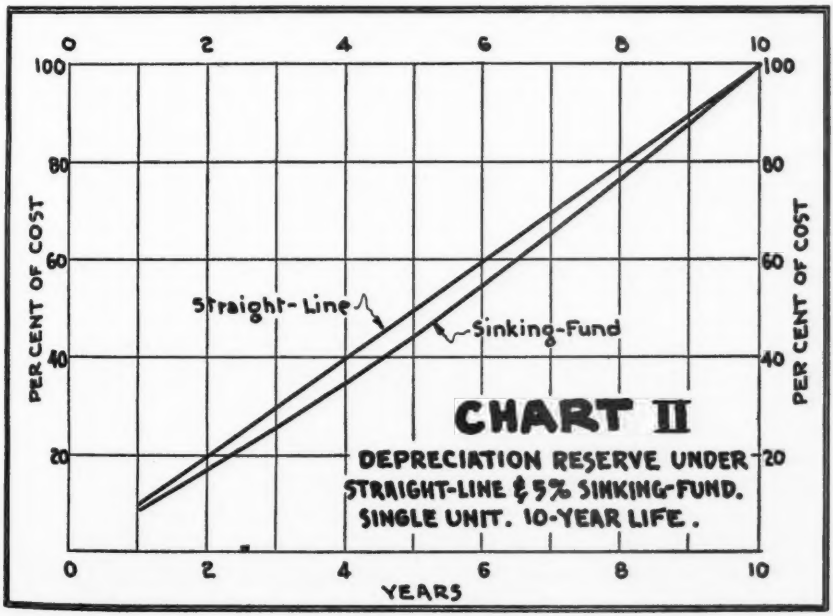


TABLE II

(Supporting Chart III)
SURVIVOR CURVE. DISTRIBUTION POLES. FIVE-YEAR BAND 1937-1941.
TOTAL OF 33,710 POLES OF ALL KINDS

A	B	C	D	E	F
Age Interval	*In Service At Beginning Of Age Interval*	*Retired*	*Remaining End of Year* (B-C)	*Survival Ratio* (D x 100 ÷ B)	*Ordinates At Beginning Of Age Interval*
0- 1	10,641	53	10,588	99.50%	100.00%
1- 2	11,802	135	11,667	98.86	99.50
2- 3	11,732	224	11,508	98.09	98.37
3- 4	10,742	124	10,618	98.85	96.49
4- 5	9,110	114	8,996	98.75	95.38
5- 6	8,390	204	8,186	97.57	94.19
6- 7	6,798	118	6,680	98.26	91.90
7- 8	6,032	194	5,838	96.78	90.30
8- 9	6,889	196	6,693	97.15	87.39
9-10	7,868	286	7,582	96.37	84.90
10-11	7,998	407	7,591	94.91	81.82
11-12	7,852	565	7,287	92.80	77.66
12-13	8,000	863	7,137	89.21	72.07
13-14	6,932	665	6,267	90.40	64.29
14-15	5,419	585	4,834	89.20	58.12
15-16	3,971	589	3,382	85.17	51.84
16-17	2,859	415	2,444	85.48	44.15
17-18	1,590	296	1,294	81.38	37.74
18-19	720	121	599	83.19	30.71
19-20	361	35	326	90.30	25.55
20-21	230	22	208	90.43	23.07
21-22	130	10	120	92.30	20.86
22-23	83	4	79	95.18	19.25
23-24	51	1	50	98.04	18.32
24-25	9	7	2	22.22	17.96
25-26	0	0	0	0.00	3.99

of average life; in other words, a preponderance of the property units live beyond the average life for the account. The "15-year" factor in the curve designation is simply the "average life" as applied to the R2 curve type.

A study of Chart III shows that, whereas the average life of all property units in the account is fifteen years, some units have a life of approximately twenty-eight and a half years.

As in the foregoing example (Charts I and II) of the single large unit, the theory is advanced by the proponents of sinking-fund depreciation that the annual contributions to the depreciation reserve more nearly meet the factual retirements of the multiple small item account than is done by the application of straight-line depreciation accounting.

It will be remembered that, for a single large unit, annual loss of service value is a fictitious quantity. It can follow any pattern one cares to assume for it. Actually, there is no service loss whatever until the day the unit is retired. It is only to combat the financial embarrassment otherwise occasioned that depreciation accounting calls for this ultimate loss to be spread over the

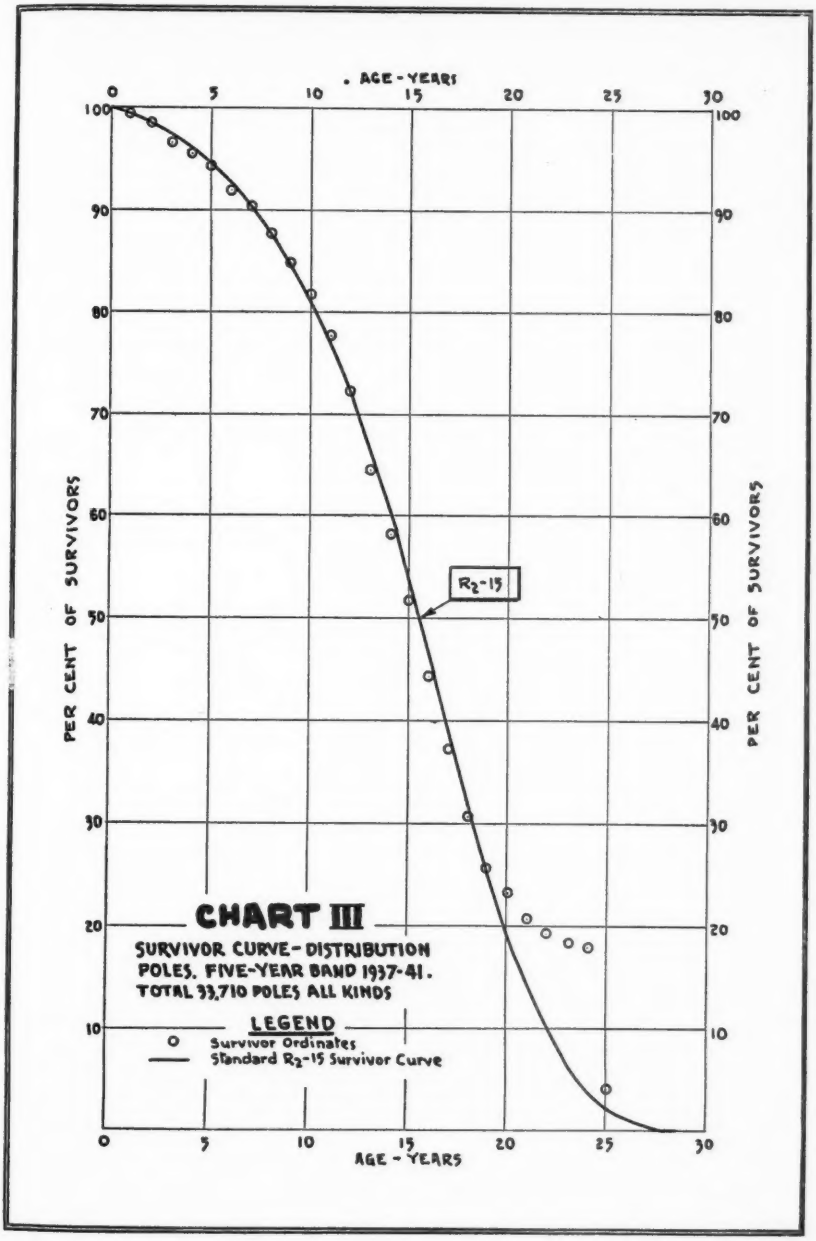

AGE - YEARS
0
5
10
15
20
25
30
100
90
80
70
60
50
40
30
20
10
PER CENT OF SURVIVORS
R_2-15
CHART III
SURVIVOR CURVE - DISTRIBUTION
POLES. FIVE-YEAR BAND 1937-41.
TOTAL 33,710 POLES ALL KINDS
LEGEND
Survivor Ordinates
Standard R_2-15 Survivor Curve

TABLE III

(To Accompany Chart IV)

ANNUAL RETIREMENTS AND ANNUAL DEPRECIATION EXPENSE UNDER STRAIGHT-LINE AND 5 PER CENT SINKING-FUND METHODS. AVERAGE LIFE EIGHTEEN YEARS

A	B	C	D	E
Age Interval	*Survivors at Beginning of Age Interval* (R2-18 Curve)	*Annual Retirements As of Jan. 1*	*Straight Line Annuity* (5.555556 x Avg. B)	*Sinking-fund Depreciation Expense* (3.745100)
0- 1	$100.00	$ —	$ —	$ —
1- 2	99.40	.60	5.54	3.75
2- 3	98.70	.70	5.50	3.88
3- 4	97.90	.80	5.46	4.02
4- 5	96.85	1.05	5.41	4.15
5- 6	95.75	1.10	5.35	4.26
6- 7	94.40	1.35	5.28	4.38
7- 8	92.80	1.60	5.20	4.48
8- 9	91.00	1.80	5.11	4.57
9-10	89.00	2.00	5.00	4.63
10-11	86.72	2.28	4.88	4.69
11-12	84.00	2.72	4.74	4.73
12-13	80.93	3.07	4.58	4.73
13-14	77.50	3.43	4.40	4.69
14-15	73.72	3.78	4.20	4.63
15-16	69.45	4.27	3.98	4.54
16-17	64.75	4.70	3.73	4.39
17-18	59.60	5.15	3.45	4.19
18-19	54.25	5.35	3.16	3.95
19-20	48.35	5.90	2.85	3.68
20-21	42.45	5.90	2.52	3.35
21-22	36.27	6.18	2.19	2.99
22-23	30.25	6.02	1.85	2.60
23-24	24.50	5.75	1.52	2.20
24-25	19.25	5.25	1.22	1.82
25-26	14.50	4.75	.94	1.44
26-27	10.56	3.94	.70	1.10
27-28	7.26	3.30	.50	.82
28-29	4.75	2.51	.33	.56
29-30	2.87	1.88	.21	.38
30-31	1.47	1.40	.12	.23
31-32	.55	.92	.06	.12
32-33	.15	.40	.01	.04
33-34	.03	.12	.01	.01
34-	—	.03	—	—
TOTALS	$1,849.93	$100.00	$100.00	$100.00

service life of the unit. Assuming uniformity of burden to be the goal, then "Chart I" clearly favors straight-line depreciation for this type of property.

Chart IV shows the relationship between actual annual retirements and depreciation charges under both the straight-line and sinking-fund methods of depreciation accounting for that type of property account comprising a large number of small similar units.

The basic data used in the derivation of Chart IV are those of a pole account to which an 18-year average life has been given.

REFERRING to Chart IV, the annual rate of retirements or the "Fre-

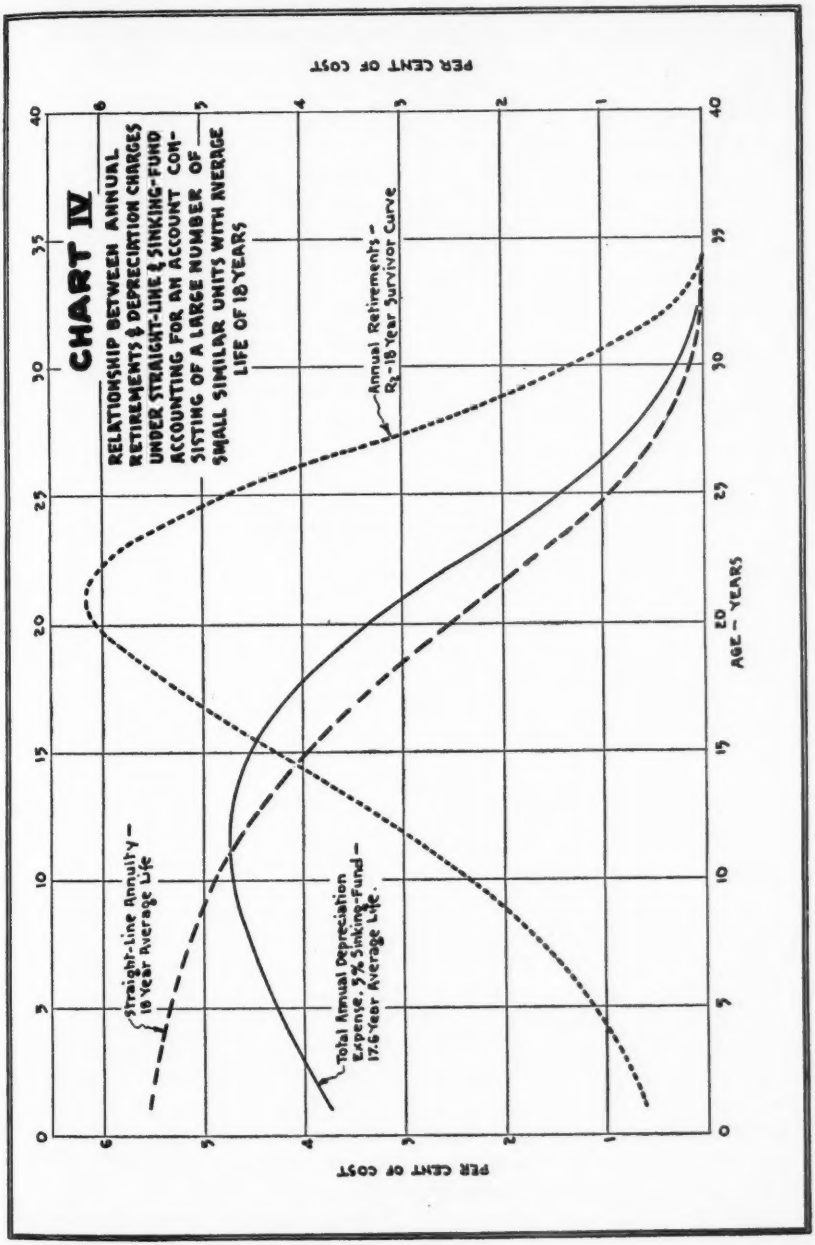


CHART IV
RELATIONSHIP BETWEEN ANNUAL RETIREMENTS & DEPRECIATION CHARGES UNDER STRAIGHT-LINE & SINKING-FUND ACCOUNTING FOR AN ACCOUNT CONSISTING OF A LARGE NUMBER OF SMALL SIMILAR UNITS WITH AVERAGE LIFE OF 18 YEARS
Annual Retirements — R4-18 Year Survivor Curve
Straight-Line Annuity — 18 Year Average Life
Total Annual Depreciation Expense, 3% Sinking-Fund — 17.6 Year Average Life
PER CENT OF COST
AGE — YEARS

quency Curve" for this account, shows a steady acceleration for the first twenty-one years. Thereafter, there is a slightly more accelerated decline in the dollar value of annual retirements until the last unit of property is retired at age thirty-four years.

It is seen in Chart IV that neither the annual annuity under straight-line depreciation, nor yet the total annual depreciation expense under the sinking-fund method, in any respect conforms to the factual dollar-rate of retirements for this account. Any discussion, therefore, as to the respective merits of these two methods of depreciation accounting, as applicable to this type of property, must be based upon some other premise.

As previously stated, the data portrayed in Chart IV are typical of that type of account consisting of a large number of small, similar property units, to which an *average* life has been applied. But there is another fact concerning Chart IV which should be clearly understood: *Chart IV is purely academic.* It presents the picture of an account comprised of approximately 34,000 property units, carried through from time of installation (zero age) to final amortization of the last unit.

ACTUALLY, in practical utility operation, such pole account is a *continuing* account. While each year poles of various ages are being retired, each year, also, new poles are being installed. In such an account annual retirements, for a stabilized company of no growth, would show but a trivial variation—theoretically, no variation. For the account here used, annual retirements would strike a fairly uniform figure of approximately 5.40 per cent of surviving property. If a correct average life has been given to such an account then, by the same token, annual contributions to the depreciation expense under either the straight-line or the sinking-fund method of accounting must, also, strike a correspondingly uniform figure of approximately 5.40 per cent.

To illustrate, assume the installation of 100 poles, new, each year. On the basis of an R2-18-year curve, annual retirements will have reached a maximum rate of 100 poles by the end of the thirty-fourth year. Original pole installations will have been 3,400 (100 per year x 34 years). Surviving units, in service at the end of the thirty-fourth year, will total 1,850 poles.

Up to this point, the company has been a growing concern. Each year, additions to the system have exceeded retirements. But, by the end of the thirty-fourth year, a stabilized condition is reached. Annual retirements, thereafter, are the same as annual additions. Both are 100 poles annually.

ASSUME, now, a continuance of these static business conditions for this company. Assume, also, no change in either pole-preservation technique or in those forces which cause pole retirement. Under such conditions the company would continue to operate, indefinitely, with a pole account of 1,850 surviving poles. Additions would be, regularly, 100 poles annually. Annual retirements, likewise, would be 100 poles. Percentage annual retirements to surviving property would be 5.40 per cent (100 x 100 ÷ 1,850 = 5.40%). See Chart V.

It is axiomatic, surely, that for such a mature and stabilized company op-

TABLE IV

TABLE IV

(*To Accompany Chart V*)

CUMULATIVE DEPRECIATION EXPENSE IN PER CENT OF PLANT IN SERVICE WITH STABILIZED AGE DISTRIBUTION OF PLANT UNDER NO GROWTH. R2-18-YEAR SURVIVOR CURVE PROPERTY

A	B	C	D	E	*Cumulative Depreciation Expense* F	G	H
Age Interval	*Cumulative Survivors* (From Table III) (Column "B")	*Cumulative Retirements* (From Table III) (Column "C")	*Per Cent Retirements* (C x 100 ÷ B)	*Straight Line* (From Table III) (Column "D")	*Per Cent* (E x 100 ÷ B)	*Sinking Fund* (From Table III) (Column "E")	*Per Cent* (G x 100 ÷ B)
	$100.00	$ —	—%	$ —	—%	$ —	—%
0- 1	199.40	.60	0.3	5.54	2.7	3.75	1.9
1- 2	298.10	1.30	0.4	11.04	3.6	7.63	2.6
2- 3	396.00	2.10	0.5	16.50	4.1	11.65	2.9
3- 4	492.85	3.15	0.6	21.91	4.3	15.80	3.2
4- 5	588.60	4.25	0.7	27.26	4.5	20.06	3.4
5- 6	683.00	5.60	0.8	32.54	4.7	24.44	3.6
6- 7	775.80	7.20	0.9	37.74	4.8	28.92	3.7
7- 8	866.80	9.00	1.0	42.85	4.8	33.49	3.9
8- 9	955.80	11.00	1.1	47.85	4.9	38.12	4.0
9-10	1,042.52	13.28	1.3	52.73	4.9	42.81	4.1
10-11	1,126.52	16.00	1.4	57.47	5.0	47.54	4.2
11-12	1,207.45	19.07	1.6	62.05	5.0	52.27	4.3
12-13	1,284.95	22.50	1.8	66.45	5.1	56.96	4.4
13-14	1,358.67	26.28	1.9	70.65	5.1	61.58	4.5
14-15	1,428.12	30.55	2.1	74.63	5.1	66.11	4.6
15-16	1,492.87	35.25	2.4	78.36	5.2	70.49	4.7
16-17	1,552.47	40.40	2.6	81.81	5.2	74.67	4.8
17-18	1,606.72	45.75	2.8	84.97	5.2	78.61	4.9
18-19	1,655.07	51.65	3.1	87.82	5.2	82.28	5.0
19-20	1,697.52	57.55	3.4	90.34	5.3	85.62	5.0
20-21	1,733.79	63.73	3.7	92.53	5.3	88.61	5.1
21-22	1,764.04	69.75	4.0	94.38	5.3	91.21	5.2
22-23	1,788.54	75.50	4.2	95.90	5.3	93.41	5.2
23-24	1,807.79	80.75	4.5	97.12	5.3	95.23	5.3
24-25	1,822.29	85.50	4.7	98.06	5.4	96.67	5.3
25-26	1,832.85	89.44	4.9	98.76	5.4	97.77	5.3
26-27	1,840.11	92.74	5.0	99.26	5.4	98.59	5.4
27-28	1,844.86	95.25	5.2	99.59	5.4	99.15	5.4
28-29	1,847.73	97.13	5.3	99.80	5.4	99.53	5.4
29-30	1,849.20	98.53	5.3	99.92	5.4	99.76	5.4
30-31	1,849.75	99.45	5.4	99.98	5.4	99.88	5.4
31-32	1,849.90	99.85	5.4	99.99	5.4	99.92	5.4
32-33	1,849.93	99.97	5.4	100.00	5.4	99.93	5.4
33-34	1,849.93	100.00	5.4	100.00	5.4	100.00	5.4
34-							

erating under static business conditions, annual contributions to depreciation expense regardless of the method used must, also, theoretically be the monetary equivalent of 100 poles. Otherwise, the account would suffer either accretion or loss. There is no question of loss of future service value in surviving property; that has all been taken care of through the function of *average life*. The stabilized 100-pole, annual retirement is a composite of poles of all ages.

Thus, it is seen that, for a stabilized company operating under static business conditions, there is and can be no differences between straight-line or sinking-fund depreciation for this class of group property to which has been applied an average life. The difference between the two methods enters the picture only when we assume a company whose business is not static.

THE business of a company may be growing or it may be approximately static or it may be declining. Again, a company may be operating under one of these conditions today and, some years hence, under changed conditions.

If a company is growing, its annual contributions to depreciation expense under the sinking-fund method will be less than under straight-line depreciation. This is because, in a growing company, there is a preponderance of young property. And, under the sinking-fund method, depreciation expense is less in the early years of a property than under the straight-line method. By the same token, for a declining

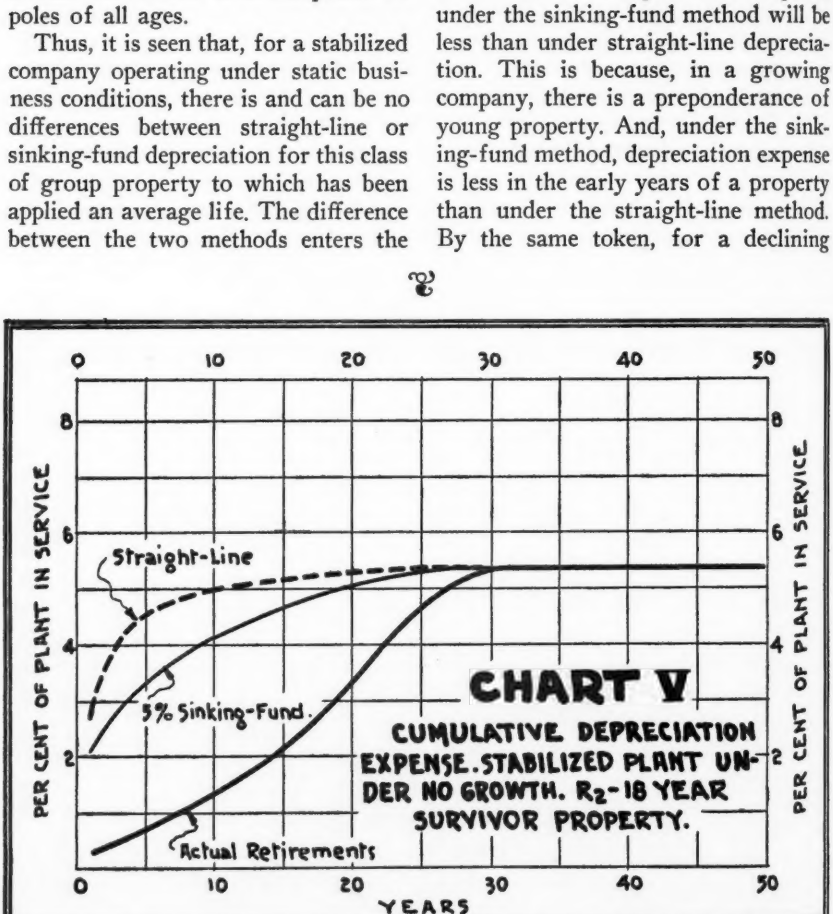


CHART V

CUMULATIVE DEPRECIATION EXPENSE. STABILIZED PLANT UNDER NO GROWTH. R_2-18 YEAR SURVIVOR PROPERTY.

company with a preponderance of older units, annual depreciation expense is less under straight-line depreciation (see Charts I and IV). We are perhaps, today, in an era of company expansion. Nevertheless, we should not let this blind our eyes as to what takes place in an era of company decline.

The wisdom of using sinking-fund depreciation can, therefore, be seriously questioned. A company may be growing today; but will it be growing tomorrow? That is the long-range regulatory question.

It is a matter of common knowledge that all living things have a well-defined life cycle. There is a period of growth until maximum stature is reached. Then decline sets in, culminating in final demise. This is true of all life—animate and inanimate. It is true even of planets and of universes. It is, of course, true of going business concerns such as utility companies.

Now, what is the wisdom of under-accruing today with the sure knowledge that tomorrow must be picked up the slack—tomorrow, in our decline, when we are less able to carry the burden? Is it ethical to lighten the burden for today's consumer at the expense of the consumer of tomorrow—just because the "tomorrow," in this case, happens to be a long way off and may not then be our individual responsibility? Are we not, perhaps, in our ever-persistent reach for smart refinements nullifying, in some measure, the very principle upon which depreciation accounting rests: *to spread the burden of depreciation uniformly over the property life?*

Summarizing:

1. The historical purpose of depreciation accounting was to spread the burden of depreciation wastage uniformly over the property life.

2. The account consisting of a multiplicity of small, similar units occasioned no financial embarrassment under the old replacement method.

3. It was the financial embarrassment entailed by the retirement of the single large unit, at irregular intervals, that called depreciation accounting into being.

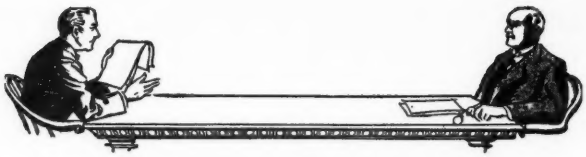
4. For this property—the single large unit—straight-line depreciation spreads the burden of depreciation wastage uniformly over the property life. (See Chart I.)

5. For stabilized property accounts of no growth, consisting of a multiplicity of small, similar units, the burden is spread uniformly under either the straight-line, the sinking-fund, or the old replacement method. (See Chart V.)

6. For a growing company, annual contributions to depreciation expense total less under sinking-fund depreciation than under straight-line depreciation.

7. For a company whose business is declining, annual contributions to depreciation expense total less under straight-line depreciation than under sinking-fund depreciation.

8. The lower depreciation charges under sinking-fund depreciation for an expanding company are enjoyed at the expense of inevitably higher charges in its declining years. This is in direct conflict with the historical goal of depreciation accounting: *to spread the burden of depreciation wastage uniformly over the property life.*



Do Nebraska Consumers Need More Regulatory Protection?

Has public ownership of utilities created a blind spot in Nebraska regulation as the result of which utility consumers of that state will find themselves without protection? This author feels that by exempting publicly owned districts from ordinary utility regulation, utility consumers would become exposed to the hazards of arbitrary political management if not possible exploitation.

By WILL M. MAUPIN
FORMER MEMBER, NEBRASKA STATE RAILWAY COMMISSION

CERTAINLY the public utilities, publicly and privately owned, are entitled to congratulations and thanks from the public for their all-out efforts to win the war. Some of them have been hampered a bit by labor troubles, and some have benefited from high priorities. But by and large they have been doing a good job, hence the thanks and congratulations due.

But are there not quite a few of us who do not hold stock in public utility corporations, publicly or privately owned, who are also entitled to a bit of praise and a few congratulations? Unless we pay the rates exacted by the aforesaid public utility corporations we are deprived of service and when we do pay the rates we have no voice in their making.

This is not true, perhaps, of all utility rates. But little by little the voice we do have is growing weaker and weaker. Uncle Sam, who keeps edging in on what was once the right of a state to manage its own internal affairs, is probably going to see to it that the utility corporations are going to get enough to keep going, no matter what happens to the consumer. The OPA is fast gaining ground in this field. A great deal of what was once admittedly purely intrastate business has been manipulated into interstate business, with the result that local control of rates and service has now become Federal control, and the local consumer just has to grin and bear it.

To date I have not heard of any ceilings being put on utility rates, although ceilings have been placed on nearly everything else, and if not ceilings, then rationing.

SPEAKING of rates and regulations, we of Nebraska have a situation that may or may not be peculiar to ourselves. In 1931 the legislature enacted into law what is familiarly known as Senate File 310. It provided for the organization of publicly owned hydro-

electric developments, and the organization of public power districts, all to be financed by the Federal government. Under this law several huge hydroelectric developments were undertaken. The law specifically provided that they were nontaxable, and that the state's utility regulatory body, the state railway commission, should have no jurisdiction whatsoever over their rates or security issues.

Although not exempted from the state's safety rules and regulations, the public districts did attempt to secure that exemption, but failed. Among the hydroelectric developments that followed the enactment of the law were the following: Sutherland at North Platte, Loup at Columbus, Tri-County, another on the Middle Loup, and several smaller ones. All save one, the Columbus project, were supposedly founded on the need of irrigation, sadly needed, the revenue from the sale of power to help defray the cost of irrigation.

All told the Federal government advanced approximately $75,000,000 to develop these projects, with several millions more to be advanced to complete them. Today, fewer than 200,000 acres have been able to secure water sufficient for irrigation, but there is power to spare. With this background it is possible to understand the situation existing in Nebraska at the present time.

TODAY the Consumers Public Power District, with headquarters at Columbus, has purchased every privately owned electric utility in the state with the sole exception of the Nebraska Power Company of Omaha, the largest of them all, and now is negotiating for its purchase. There remain a few municipally owned power plants, but Consumers has purchased many. Just how many millions Consumers has paid out to acquire these properties is not definitely known, but it is commonly reported that one Guy C. Myers, who does all the negotiating on a commission basis, has drawn down considerably more than a million dollars in commissions, which the consumers must eventually pay in rates. The rates of privately owned power plants were regulated by the municipalities in which they were located, and the state railway commission had jurisdiction over their security issues.

Today there is in Nebraska absolutely no regulation of the rates, service, and security issues of the Consumers Public Power District. The only regulation imposed is building lines in accordance with the national safety code and the rules and regulations of the state commission. The Consumers District can buy whatever power utility it pleases, pay whatever price it pleases —and the higher the price the larger Myers' commission — and issue and sell revenue bonds to pay the price fixed or agreed upon. These bonds specifically provide that the rates to be fixed must be sufficient to cover depreciation, overhead, and interest on the bonds— *and if the rates so fixed fail to meet the charges, then rates must be raised.*

Furthermore, there is no authority that can fix depreciation rates, overhead costs, salaries, etc. In other words, four or five men sitting in an office building in Columbus (said building being paid for by the ratepayers who had no voice in fixing its cost) have to all intents and purposes the full power of price and use over the consump-

Regulation Imposed on Consumers Public Power District

"TODAY there is in Nebraska absolutely no regulation of the rates, service, and security issues of the Consumers Public Power District. The only regulation imposed is building lines in accordance with the national safety code and the rules and regulations of the state commission. The Consumers District can buy whatever power utility it pleases, pay whatever price it pleases . . . and issue and sell revenue bonds to pay the price fixed or agreed upon."

tion of electrical energy in most of Nebraska. If Consumers succeeds in obtaining possession of the Nebraska Power Company it will have that power actually.

THE privately owned electric utilities did have some measure of regulation as to rates and service, but under the present law the publicly owned Consumers is as free from control as a bird in the air or a fish in the ocean. Its revenue bonds are readily salable, at the usual discount and commission, for there will always be some consumers of electricity that must have it or quit business,—consequently will have to pay the rate that will meet depreciation, overhead, amortization, and bond interest. Why should the bondholders worry?

Meanwhile, those who control railroads, telephones, express, Pullmans, trucks, busses, telegraph, etc., must submit to rate regulation and control of service, and when they feel the need of additional security issues they must show cause, and plenty of it. If a Nebraska railroad desires to close a station, or substitute a custodian for agent-operator, or discontinue a particular train service, it must have the consent of the state railway commission. But the Consumers Public Power District is immune under the law.

When the bond issue of a privately owned public utility is due and no money on hand to pay, it must secure permission to refund. When a federally financed power district fails to make enough to pay depreciation, overhead, amortization, and interest, Uncle Sam kindly adds the amount due to the original debt and lets it go at that. What a lot of embarrassment would be spared many of us if our local bankers were

as kind of heart as Uncle Sam!

Nor is this quite all. Under the law the privately owned utilities have to pay taxes in annually increasing amount, but Consumers is exempt from taxation under the Nebraska law. Of course we ratepayers really pay the taxes of the privately owned utilities because the taxes are reflected in the rates we pay. At the last session of our unicameral legislature an attempt was made to repeal the nontax feature of the law, but it was headed off by the Consumers' lobby offering to pay "in lieu of taxes" a certain amount fixed by it. This simply means that when Consumers purchases a privately owned plant it does not pay taxes in proportion to the value fixed at the time of purchase, which may be two or three times the physical value of the plant, but pays the tax paid on the plant while privately owned. Whatever additional investment costs, or betterments added, the amount of "in lieu of taxes" remains the same. Privately owned utilities certainly would not object to similar treatment.

For years on end consumers of energy developed by privately owned utilities were given horrible pictures of the utility lobbies around our legislature. "Wine, wimmen, and wittles" were said to be even freer than the air, and money as easy to grab off as blackberries in a briar patch. The employers of these conscienceless lobbyists were pictured as robbers of the public, including widows and orphans. The picture is familiar. But did Consumers maintain a lobby at Lincoln during the last two sessions of the unicameral legislature? Foolish question! Whatever its activities, and whatever the cost, it was all included in miscellaneous in the report required by law to be made to the governor. Sometimes "miscellaneous," like charity, can be made to cover a multitude of items.

Yet, honesty and frankness require that praise be given Consumers for its splendid service to date. Nebraska has been chosen as the site for four or five immense war industries, most of them because of the great power development in Nebraska since 1933. Power to farms has been developed more rapidly than would otherwise have been possible. But while praise, justly deserved, is accorded Consumers Public Power District, what about the consumers of its product? Are they not deserving of a bit of praise for submitting to all this without protest—at any rate without audible protest?

Sitting over here on the sidelines, neither stockholder nor bondholder in any public utility, just a ratepayer who hasn't a blooming thing to say about it all, I wonder if I am not entitled to at least a wee bit of praise for my contribution to the war effort. I am not complaining—at least not very much—about the rates I am paying or the service I am getting to and from Consumers.

The service is good, but if there has been any lowering of rates because of exemption from taxation I have not been apprised of the fact. I have discovered that my taxes are going up every year, due in some measure to the fact that more than two millions of dollars of taxes formerly coming into the state treasury in the shape of taxes on privately owned utilities is no longer coming in. As it takes just so much money to pay state and county expenses,

that missing two millions must be supplied by added taxes on the farms and homes of Nebraska. This I know from experience as a taxpayer.

As a taxpayer and consumer I have no priorities. All I have is a sugar card and the privilege of walking up to the counter and paying any and all taxes imposed, without much voice in the making. No complaints about rationing. I'll gladly go without sugar, or tires, or meat, for the duration if it will help win the war, but I would feel better about it if I knew it was really helping. If John Q. Public is not entitled to praise, who is?

Doubtless I will be charged with being antagonistic to public power development in my home state. Most emphatically I am not. I favor the largest development and widest distribution possible of electrical energy. I would like to see every farm, village, and city home electrically lighted and equipped with every possible labor-saving device.

But I want it all done under conditions applicable to all alike; all subject to the same rules and regulations; all on a basis of constructive, not destructive, competition. Nor do I believe it any more reasonable to allow five or six men who may be given the management of a public utility to go their way without let or hindrance, than it would be to allow five or six men to run the transportation industry of this country as their combined sweet will saw fit.

Once I was a Democrat because I believed in the right of a sovereign state to manage its own internal affairs without Federal interference, and because I believed that the least government that would do the job was the best government. Despite the fact that my party leaders seem to think differently now, I still register as a Democrat, holding to the old democratic belief.

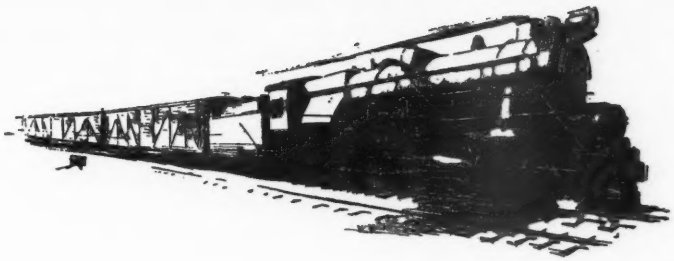
If not entitled to some praise as a patient consumer, perhaps I am entitled to some for consistency.

War Output in Danger

"At times the opinion of Washington seems to be that the mechanism of our national economy is so defective that only the hand of the Federal government can keep it running. So rigidity is proclaimed where flexibility is required. Coercion is substituted for the incentives that spur initiative in men.

"Such a course, if continued, can lead only to disaster. If government abandons its proper rôle as the director of the war effort, to become the dictator of industry, production will fall. The industry of this country cannot be run from Washington. This war cannot be won in Washington. But it can be lost there."

—J. Howard Pew,
President, Sun Oil Company.



The Ore Fleet Can Do It, If—

The Great Lakes waterway problem and the alternative route across the upper Michigan peninsula.

By FRANK M. PATTERSON

A press dispatch of July 26, 1942, quoted Joseph B. Eastman, director of the Office of Defense Transportation, as saying that a freight-carrying shortage might occur because of a lack of enough locomotives.

He said that in the first four months of 1942 our 121 major railway systems had 17,893 serviceable locomotives as compared with 24,616 in the same period in 1929. This seems serious in our present demands on transportation, but other of his data show that the situation is not so acute as the figures would indicate. (See table page 226.)

A ton mile denotes one ton of freight carried one mile and the total is obtained by multiplying the tonnage of each shipment by the number of miles it is hauled.

His data show a marked gain in efficiency, since early 1929 was a time of great industrial activity. He cited that 300 billion ton miles of freight were carried in the first six months of 1942, a monthly average 6.4 greater than in the first four months. In addition the railways carried large numbers of men to the various training camps throughout the country.

Mr. Eastman attributed the enviable record in 1942 to the use of trucks for short hauls; a reduction of short-haul local freight trains; the ODT order setting minimum weight limits for less than carload shipments; and greater efficiency in locomotive servicing.

These have been of great value, but other factors have aided. Among them are the greater tractive power of the locomotives and the improvement of the tracks to permit their operation at higher speeds than in 1929 with a larger percentage of cars having higher allowable load ratios of their dead weight than in the former year.

Another factor is the abandonment of unproductive branch lines, thereby releasing locomotives, freight

cars, and train crews for long-haul service, as well as rail for tracks at training camps or war industry plants and much badly needed scrap for the steel mills.

An element making for improvement is the coöperation of the railways and government agencies, thus by-passing the ineptitudes of government operation in World War I.

George C. Randall, of the Association of American Railroads, has said that more export freight is passing through American ports than at the peak of World War I, contrasting present conditions with the former when at one time 200,000 cars stood idle under load at or near North Atlantic ports and crediting the improvement to coöperation of the railways, steamship lines, government agencies, and port authorities.

Brigadier General Charles P. Gross, chief of the Army Transportation Corps, has warned that without more locomotives and cars the railways might be unable to carry the rising war load and said they had about used up their reserves of surplus equipment, citing their necessity of using some 1,200 locomotives, available last year for other traffic, to haul oil because of the sinking of tankers by enemy submarines.

THE foregoing shows vividly the lights and shadows in the railways' effort to keep up with war demands and stresses the importance of careful study by competent bodies of any plans not justified economically when billions of dollars are needed for war purposes.

Here it may be asked, "What have all these data for the railways to do with the transportation of ore on the lakes?" The answer will be found in what follows.

Many usually well-informed citizens believe that the railways will be unable to meet all the demands upon them in the vastly increased hauling of vital war matériel and the transport of our prospective soldiers to training camps as well as from the camps to the ports from which they sail. Admittedly the factor of safety is small, but the railways are confident they can do the job and the record to date bears them out if they are not called upon for other service that can be done more cheaply by other agencies.

A SERIOUS example of waste is found in the approval by WPB of an estimated cost of from 20 to 30 million dollars for an alternate ore shipment route across the upper peninsula of Michigan to guard against possible destruction of the locks of the Soo canal.

The project, to be completed this year, calls for the construction of ore docks with necessary yards and the

COMPARATIVE DATA FOR FIRST FOUR MONTHS OF 1929 AND 1942

	Ton Miles	Per Cent Increase	Serviceable Locomotives	Per Cent Decrease	Ton Miles Per Locomotive	Per Cent Increase
1929	141 Billion	..	24,616	..	5,727,982	..
1942	188 Billion	33.3	17,893	27.3	10,506,091	83.4

Freight from Duluth to Lower Lake Ports

"To haul 40 million tons annually by rail from Duluth to the lower lake ports would require average daily shipments of 109,589 tons. Assuming a 'pay load' of 65 tons and a 'dead load' of 20 tons per car would require a daily average of 1,686 cars and 24 locomotives capable of hauling 6,000 tons per train. Since the 'turn-around' time would be at least four days, four times the equipment cited for daily service would be needed."

dredging of channels at Escanaba, Wisconsin, on Lake Michigan. Also to be started immediately is the improvement of the railway from Superior and Ironwood, Wisconsin, to Escanaba by new ballast and ties and the strengthening of bridges.

WPB estimated that the project will make it possible to ship up to 100 million tons of ore annually without using the Soo locks, which it intimated are vulnerable to sabotage or accidental damage. It said that when the work is completed 40 million tons could move by rail from the Duluth area to mills in Ohio and Pennsylvania and that 60 million tons could go from Lake Superior ports to Escanaba either all rail or by water and rail to Escanaba via Marquette, Michigan, and thence by water to the lower lakes.

To haul 40 million tons annually by rail from Duluth to the lower lake ports would require average daily shipments of 109,589 tons. Assuming a "pay load" of 65 tons and a "dead load" of 20 tons per car would require a daily average of 1,686 cars and 24 locomotives capable of hauling 6,000 tons per train. Since the "turn-around" time would be at least four days, four times the equipment cited for daily service would be needed. The charges for rail haul would be a great deal higher than by lake and much railway equipment would be diverted from other essential war needs.

IN a discussion of the railway situation at the Union League club of Chicago on October 9th, Ralph Budd, president of the Chicago, Burlington & Quincy Railroad Company, said it will be difficult for the railways to

maintain their present high efficiency in 1943 unless they can add 1,000 locomotives, 2,000,000 tons of steel rails, and 100,000 freight cars to their present equipment. He placed the needs for locomotives and rails ahead of cars because with more locomotives and rails capable of carrying heavy trains at high speeds they could be moved more efficiently.

Henry A. Scandrett, president of the Milwaukee road, asserted that the improvement in handling war materials over the record in World War I was owing to the railways having profited from the mistakes and causes of congestions prevailing at that time.

Arthur H. Schwietert, traffic director of the Chicago Association of Commerce, cited that in 1941 it took five days to load and unload a car, while now the time has been reduced to three days and that this reduction of 40 per cent in dead time saves an estimated 183,000 cars for other uses.

A NEWS dispatch of August 8th told that several ice breakers were building at Toledo, Ohio, to keep the lakes open during the winter. It described them as capable of crushing 9-foot ice, equal in size to breakers for ocean service, and said that three former Detroit ferries were to be converted to breakers for lighter work. It also said that experienced transportation executives saw a possible connection between this work and the proposed railway between Superior and Escanaba.

IT is hard to believe that "experienced transportation executives" would credit the building of a Superior-to-Escanaba railway, since such a route has been long in service and WPB spoke only of its improvement. The construction of the ice breakers is of greater import, however, and should extend the navigation season through the Soo.

No 40-hour Week in Russia

"WHEN WPB's William Batt came back from Russia on an earlier trip, he told how he had enthused to Stalin on the ability of Russian factory workmen to dismantle their machines as the enemy approached, ride with them on flat cars to new locations well behind the lines, then reassemble the machines for immediate operation.

"When Batt marveled at this, Stalin replied:

"'Well, we don't have the 40-hour week here.'"

—DREW PEARSON,
Columnist.

Wire and Wireless Communication

THE House of Representatives Accounts Committee early this month approved without serious opposition a request by Representative Cox of Georgia for an initial fund of $60,000 to launch the recently authorized investigation of the Federal Communications Commission. The investigation, headed by Representative Cox, will be conducted by a 5-man select committee. This committee expects to appoint its chief counsel and other staff personnel and investigators as soon as funds are available so as to launch public hearings during the latter part of March.

Representative Cox indicated that his investigation will be confined chiefly to alleged misconduct of the FCC with respect to the issues of "Communism," "bureaucracy," and "Gestapo tactics." He does not intend, apparently, to follow earlier suggestions to broaden the investigation so as to include a probe of the radio broadcasting industry in general. Cox said he intended to follow the "mandate of the House."

The special House committee is expected, however, to go into the matter of the FCC's war activities and its relationship with the Board of War Communications, also headed by Chairman Fly.

Incidentally, another House committee is expected to open up on the FCC as a result of the revival of a measure to reorganize the FCC and split it into two divisions: one for radio broadcasting and one for commercial "carriers," including telephone, telegraph, cable, and point-to-point radio. The new bill (HR 1490) was introduced by Representative Peter G. Holmes, Republican of Massachusetts, and follows very closely the lines of a bill which died in the last session under the sponsorship of former Representative Sanders of Louisiana, who was defeated for reëlection.

CHAIRMAN Lea of the Interstate and Foreign Commerce Committee, to which the Holmes bill was referred, indicated that a subcommittee would be appointed to study the extensive testimony on the old Sanders bill and on the new Holmes bill and perhaps draft a special committee bill on such a foundation Both bills are obviously aimed at cutting down the powers exercised by the present chairman of the FCC, James Lawrence Fly.

Under the terms of the Holmes bill Chairman Fly would not have any authority to vote with either division of the bisected commission on matters pertaining to their own respective jurisdictional provinces. He would simply be a liaison officer between the two divisions and vote on matters of general policy.

The administration is expected to oppose the Holmes bill as it opposed the Sanders bill. While the overwhelming approval of the Cox resolution indicated enough potential anti-FCC strength in the lower house at least to pass the Holmes bill, considerable question existed whether there could be mustered enough strength, especially in the Senate,

to override an almost certain presidential veto. Much depends on what the Cox investigation brings out with respect to alleged deficiencies of the FCC as presently organized.

* * * *

THE House Interstate and Foreign Commerce Committee made a favorable report on Representative Bulwinkle's (North Carolina) bill to permit a merger of telegraph companies. Bulwinkle's bill differed somewhat from the companion measure introduced by Senator McFarland and passed by the Senate. The Senate version would allow only the consolidation of domestic telegraph companies. Representative Bulwinkle's bill in its original form also authorized international merger of American-owned telegraph, cable, and commercial radio companies. However, the controversial international merger feature was later dropped.

The Senate approved the McFarland bill, 71 to 10, after it had rejected, 49 to 29, an amendment by Senator Taft of Ohio to reduce from five years to two years the period for which the consolidated companies would be required to guarantee employment for all present telegraph employees of both the Postal and Western Union systems. The House bill is expected to differ somewhat from the Senate bill, also, with respect to its labor provisions.

* * * *

THE Board of War Communications on January 22nd established priorities for all telegraph, cable, and radio telegraph carriers, giving first call to messages of War, Navy, and State departments. This action, effective February 15th, had been anticipated since a similar system was set up November 1st for long-distance telephone lines. Priorities were ordered earlier in January on all teletypewriter lines.

The board established two types of priority messages, one described as "US urgent" and the other as "OP priority." The first applies only to domestic and international messages filed by the State, War, and Navy departments. The second may be used only by the War and Navy departments.

A third designation is simply "priority" and may be used by any of the three agencies in matters involving immediate danger owing to the presence of an enemy and emergency in connection with actual military or naval requirements, or a hurricane, flood, earthquake, or other disaster.

Messages which carry the designation "rapid" will be given prompt transmission, but will not interrupt messages which may be in transmission when the "rapid" file is received. This classification may be used for messages involving important governmental functions, machinery, tools, or raw materials for war plants; production, movement, or diversion of central supplies; maintenance of essential public services; supply, movement, or diversion of food; and civilian defense and public health and safety.

The board issued another order to all domestic telegraph carriers to "limit and restrict" the use of "franks" (messages carried without charge) and to give messages so submitted the status of "night letters."

The companies were also ordered to restrict the use of deadhead messages on company business, and not to transmit any free service message for a sender or addressee of a message already filed.

The board ordered that messages not designated with a priority should be handled in the customary manner.

* * * *

WESTERN Union Telegraph Company and Postal Telegraph-Cable Company announced recently that on February 1st they would institute a new economical long-message service, to be known as the longram service. In speed of communication it will be comparable to deferred day service, but its cost will be markedly less.

The present day letter rates would apply on longrams up to the first 60 words. On messages of 61 to 100 words

the new rate is twice that for a 10-word full rate telegram, with a small additional charge for each subsequent group of 5 words.

* * * *

ALTHOUGH the wire communications industry will need—and probably get—about 12,000 tons of copper for wire during 1943, the industry is expected to return to the nation's stockpile an equal amount of copper in the form of scrap, the War Production Board estimated recently.

According to Leighton H. Peebles, director of the communications equipment division of WPB, American Telephone and Telegraph Company representatives have assured the board that present estimates of the Bell companies, which comprise 80 per cent of the domestic wire communications network, indicate that scrap will be returned to the stockpile during 1943 in amounts equal to and possibly greater than the total tonnage of new copper withdrawn by the companies.

Telephone and telegraph companies used approximately 35,000 tons of copper during 1942 in their domestic operations. In 1941 they used between 90,000 and 100,000 tons. The average annual use by the industry for the years 1926 to 1941, inclusive, was approximately 55,000 tons.

In years of expansion, such as 1928, 1929, and 1930, the annual use of copper in the domestic wire communications networks was in excess of 100,000 tons. The lowest annual use during the depression period totaled about 18,000 tons.

* * * *

C. H. DAUBENDIEK, manager of the Jefferson (Idaho) Telephone Company, was convicted by a district court jury on January 30th on a charge of failing to transmit telephone messages speedily—in the "no gas, no telephone service" case.

Judge Bruce M. Snell on February 4th sentenced Daubendiek to ninety days and fined him $500 for interrupting telephone service. Defense Attorney Guy G. Richardson indicated he would seek a new trial.

The state accused Daubendiek of intentionally manipulating telephone equipment so that calls could not be completed through the switchboard for two hours the night of December 15th, because the rationing board refused to grant him all the gasoline he sought for the automobile he used in business.

Daubendiek testified the interruption resulted from technical trouble in the equipment and denied he did anything to cause the delay.

The ration board declined to grant him auxiliary gasoline pending his compliance with technical requirements. He has since filled out all the necessary forms and now holds a "C" card.

* * * *

THE telephone equipment companies have gone back to Alexander Graham Bell's original "voice power" telephone as the basis for a communications system able to stand up under the toughest conditions, according to Robert Laffan, writing in *The Wall Street Journal*. This new-old invention is a telephone system which operates for hundreds of miles without a battery; the sole source of power is the human voice.

Communications equipment of this type won't find its way into the home or office. The sound-powered telephone is designed primarily to do a more rugged type of work. It is more expensive, for instance, than the ordinary interoffice communications system. This type of communication has advantages especially useful to certain business and industrial needs. The battery-less telephone is safer; it has no sparks to set a fire in an oil refinery, or powder plants, for instance. There is no battery to break down; it is valuable in the far North, where cold weather hits battery communications hard. It requires no maintenance, an asset in remote regions where repairmen are not to be found.

In putting the battery-less telephone to use the telephone equipment companies have turned backward sixty-five years to the first commercial telephones.

Those had no batteries but they were not successful either. The transmission was weak. Today's version works well, thanks to better metals and engineers' better use of them.

The no-battery phone operates this way: Sound waves from the speaker's voice strike a diaphragm of light metal, causing vibrations in an armature. This produces air gaps between the latter and the pole-pieces of a permanent magnet, and causes the production of alternating currents in a coil of wire. A similar receiver converts the electric power back to sound again. Thus, a single instrument serves alternately as transmitter and receiver. Together with the connecting wires, the two units make up a complete telephone system.

Much of the success in reviving the battery-less telephone to its present highly useful state, engineers say, is the improvement in recent years in metals. High-quality electrical steels for magnets, and duralumin for diaphragms, have contributed a great deal.

BATTERY-LESS phones are not a brand new revival. Some were in use before the war but military demands have sharply spurred their development. They will find a lot more peace-time uses awaiting them after the war. The battery is the cause of most breakdowns in modern communications. Radio transmission cannot function without batteries. The standard telephone system uses them by the score in central stations and relay stations.

In excessively cold climates, in torrid zones where there is much moisture, anywhere there is vibration, batteries deteriorate and need servicing. Moreover, in such places as the explosive area of a powder factory or in a cracking plant of a modern-day oil refinery the spark from a battery is an ever-present menace.

Development of this type of telephone is the work of many companies in the communications manufacturing field, including such firms as American Automatic Electric Company, Chicago, Control Instrument Company, Inc., Brooklyn, New York, Radio Corporation of America, United States Instrument Company, New Jersey, and Western Electric Company, AT&T subsidiary.

* * * *

THE number of telephone systems within the jurisdiction of Ontario of which the Ontario Municipal Board has record is 571, operating 120,914 telephones, 32,062 miles of pole lead carrying 203,070 miles of wire, and representing an investment of over $11,750,000.

There are 11 systems owned and operated by municipalities; *viz.*, the cities of Fort William and Port Arthur; the towns of Cochrane, Dryden, Fort Frances, Kenora, Keewatin, and Rainy River; and the townships of Alberton, Caledon, and Hilliard.

There are 69 systems owned and operated by individuals or partnerships of less than five persons, 353 by incorporated telephone companies, 10 by incorporated companies other than telephone companies, and 7 by Federal and provincial government departments and commissions.

In addition the forestry branch of the Department of Lands and Forests is operating an extensive system in connection with its work of fire prevention. This system comprises 768 telephone systems, 1,796 miles of pole lead, 1,140 miles of tree line, and 5,621 miles of wire, total investment being $319,136.

* * * *

THE War Manpower Commission's Selective Service Bureau on January 29th raised from 92 (Occupational Bulletin No. 27) to approximately 120 the list of essential occupations in the communications field for which local draft boards may consider deferments.

Added to the list were positions with press associations; magazines of general circulation devoted primarily to dissemination of public information; production of motion pictures; protective signal systems supplementing fire and police protection to military, public, and private industrial and commercial establishments; radio communications; and submarine cable.

Financial News and Comment

By OWEN ELY

Wall Street Hopes Congress Will "Do Something" for the Utilities

THE average price of utility operating company stocks in April, 1942, dropped to less than one-seventh of their 1929 high levels—and to less than half of the average for the so-called normal year 1926. For holding company stocks, the decline was much more catastrophic—last year they stood at less than 3 per cent of the bull market top, and at only 13 per cent of the 1926 average; despite the huge growth of the industry in two intervening decades they were 38 per cent below the 1921 depression low and 65 per cent below the 1932 depression low. But utility stocks have now recovered as follows (see also chart, page 235):

	1942 Low	*Jan. 27, 1943*	*Increase*
Operating stocks .	54	77	43%
Holding company stocks	23	39	70

The declines of recent years seemed due primarily to heavier taxes and overzealous Federal regulation — political persecution would be another name for it. But utility stockholders have now begun to see "a little daylight at the end of the tunnel." Congress finally awakened to the fact that the industry was being unfairly taxed, and the final 1942 tax bill relieved the situation in numerous ways.

Utility systems which had rigorously accrued taxes up to October, according to the worst prevailing drafts of the tax bill, were able to make substantial readjustments in the final quarter of the year. Thus American Power & Light in the three months ended November 30th reported (on a consolidated basis) $3.15 per share on the preferred stock, a gain of 208 per cent over last year (whereas in the previous three months only 58 cents was reported, a decline of 31 per cent); for the twelve months ended November there was a gain of 10 per cent. Commonwealth & Southern in the three months ended November showed a gain of 2 per cent and Electric Power & Light 51 per cent. Engineers Public Service did not issue quarterly figures, but for the twelve months ended November 30th reported 95 cents a share, compared with 50 cents in the twelve months ended September. United Gas increased its quarterly earnings 48 per cent over last year. Other results thus far available are less encouraging (see table, page 238), but the figures quoted illustrate the large benefits which some companies have obtained from the tax readjustments.

To mention an extreme instance, some statisticians estimated early last spring that Standard Gas & Electric could only earn about one-third of its debenture interest requirements if the Morgenthau proposal for a 55 per cent normal tax was enacted. Yet for the twelve months ended September 30th Standard Gas earned $10.50 per share on the prior preferred stock, a gain of 36 per cent over the previous year; and the showing for the calendar year may be even better.

THE recent spectacular earnings gains made by some of the holding companies were doubtless due in part to technical phases of the new law, relating to the surtax relief on certain preferred dividend requirements, greater latitude in making consolidated returns, etc. The operating companies are appar-

ently not so favorably affected, as most of those for which reports are available continue to show declines from last year. The earnings picture is therefore still decidedly mixed.

The main motive force behind the recent recovery in the price of utility stocks, however, has doubtless been the changed political situation. This is a delicate topic for discussion, but there seems little doubt that Wall Street and investors generally (while pessimistic as to any substantial relief through court decisions) are hopeful that Congress will act to relieve some injustices which they feel have been meted out to the industry. The most likely probability appears to be a renewed effort to pass the Walter-Logan Bill providing for judicial review of decisions of government agencies (opposed by President Roosevelt in April, 1940, but later passed by the House). However, new legislation might conceivably take a variety of forms, such as the following:

(1) Relief for the industry from excess profits taxes, on the grounds that earnings are restricted by local regulation to around 6 per cent on the rate base, and that the industry is making relatively small profits on power sold to war plants (such power being billed at low industrial rates).

(2) The Utility Act might be amended so as to permit a more lenient interpretation of the geographical phase of § 11; and also to permit gas and electric properties to be retained under one management where there are obvious economies in operation, such as meter reading, joint billing, etc.

(3) The SEC might be directed to defer, for a reasonable period after the end of the war, the forced liquidation of properties as now threatened by SEC orders.

(4) Congress might direct the SEC to permit unlimited retirement of senior securities by the tender method (with which the SEC is not in sympathy, but which is perhaps the most *practical* method of expediting the dissolution of holding companies).

(5) Definite action might be taken by Congress to permit public power districts to borrow from the Treasury, and/or to issue tax-free securities in their own right, to permit the utilities to sell their properties to them at a fair price in relation to earnings. There is considerable difference of opinion about such a measure. It would give a rapid impetus to public ownership for the whole industry, and hence is considered highly undesirable in some utility quarters. On the other hand, if the holding companies *must* be dissolved, this is one means by which they can get a fair price for their own security holders, under present investment conditions. Of course, such an act would be somewhat out of line with the avowed administration desire to make all municipal bond issues taxable; but, even if they were made taxable, the newly created power authorities would still enjoy one-half their advantage; namely, exemption from Federal income taxes.

(6) Congress might "streamline" the SEC and FPC. The functions of the two commissions overlap—for example, both have considerable power over accounting rules. The SEC has additional heavy duties (outside the utility field) in regulating the stock exchanges and the issuance of securities. It would seem logical to center all Federal regulation of utilities in one commission, all regulation of security exchanges in another. The number of commissioners might also be increased in order to permit more expeditious handling of the enormous tasks confronting both commissions—especially the solution of the holding company problem.

It is difficult to forecast exactly in what way relief can come to the industry, and it is uncertain whether any substantial gains can be expected prior to the 1944 elections, but the stock market is apparently discounting some form of help from Congress, either now or later.

There is a third (but less important) reason why utility stocks have advanced —the improved military outlook and the possibility that the European conflict may be ended in 1943. Utility stocks are

"peace" stocks, since it is hoped that the heavy tax burden will automatically be lightened after the end of the war, regardless of the administration then in power.

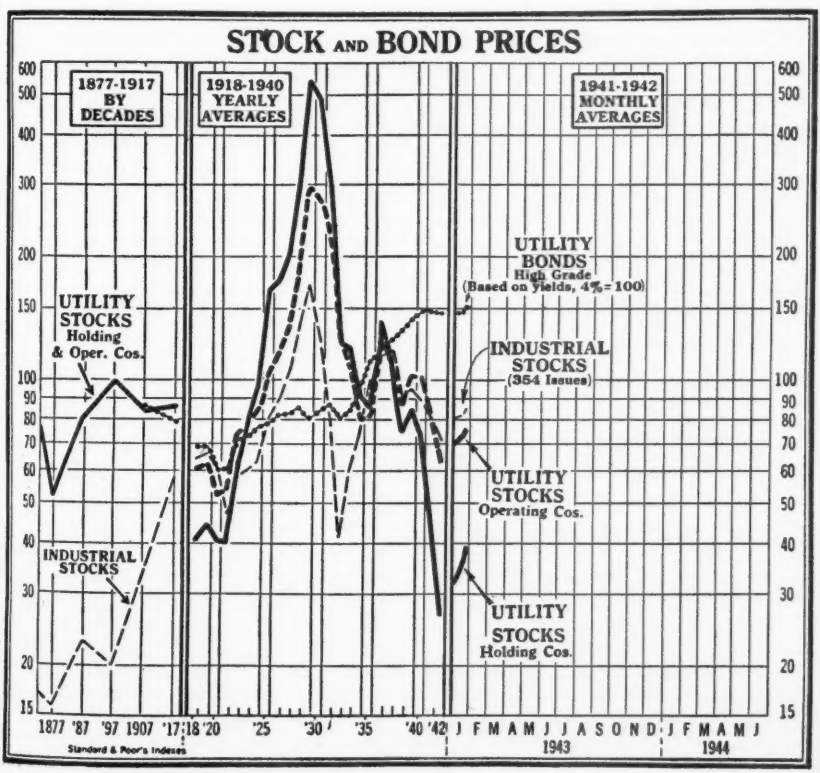
United Traction Company

(Eleventh in a series of brief articles on traction companies.)

UNITED Traction Company and its subsidiaries serve an upstate New York district which includes Albany, Troy, Watervliet, Cohoes, Rensselaer, and a number of smaller municipalities. The company operates both street car lines and motor busses. Operating revenues amounted to about $2,300,000 (recent data not available).

United Traction entered receivership in 1929, but reorganization is now practically completed. The principal subsidiary, Capital District Transportation Company, will also shortly emerge from receivership. United's property was returned to the possession of the old company (without foreclosure) recently, and the new securities (issued in accordance with the amended plan of reorganization, as modified by the court proceedings) will be dated February 1st. The capitalization of the parent company is being reduced from around $6,500,000 debt to approximately $1,500,000, which is all in the form of income notes (Series A and B due in 1963, and Series C in 1983).

The old securities, with approximate recent prices, and the new securities obtained in reorganization are shown in the table on page 236.



	Price About	Received in Reorganization: Cash	First Inc. 5s	First Inc. 4s	Second Inc. 4s	Common Stock
$2,000,000 Troy City Railway first 5/1942	10	....	....	....	$120*	9½ shs.*
$3,576,000 United Traction cons. 4½/2004	19	....	....	....	240†	16 shs.†
$428,000 Albany Railway cons. 5/1930	96	$250	$750	....	125	39 shs.**
$496,000 Albany Railway genl. 5/1947	77	$150	....	$850	125	16 shs.**

* Or $50.39 cash in lieu of all securities (accepted by some bondholders).
** Or $1.13 cash per share.
† Or $97.37 cash in lieu of all securities (accepted by some bondholders).

The new income notes are quoted (when issued) about as follows, on the bid side: first "A" 5s, 80; first "B" 4s, 70; second "C" 4s, 50. The common stock is currently around 7. Bondholders who accepted the cash options (see footnotes in table above) sometime ago made an unfortunate choice.

No figures have been issued for 1941-42 since the company has been operating under the receivers. In the year 1940 net income before bond interest and Federal income taxes amounted to only $31,341 compared with $82,648 in the previous year. Obviously, under war-time conditions, earnings must have shown sharp improvement, as reflected in the current prices of the new securities.

The new capitalization is about as follows:

$321,000 first A 5s
421,600 first B 4s
750,000*second C 4s
65,000*shs. common stock

* Approximate.

The common stock was formerly owned by Associated Gas & Electric, but was assigned to a nominee of the receivers (without consideration, it is understood) and either canceled or reissued to the extent indicated above.

New York State Railways, which operates in neighboring territory but is now partially dismembered as a system, was also formerly controlled by the Associated system.

SEC Receives Setback from Supreme Court

THE SEC has shown a tendency to digress somewhat from the strict letter of the Utility Act in some cases, apparently feeling that it enjoyed general supervision over the "morals" of the electric power industry. This tendency is now being questioned.

In the recent decision granting North American Light & Power Company an extension of six months in which to comply with the order of liquidation, the commission assumed that it had the right to take jurisdiction to determine certain unliquidated claims against the company. Commissioner Robert Healy, who has served longest on the commission, dissented from the other four members, stating (our italics):

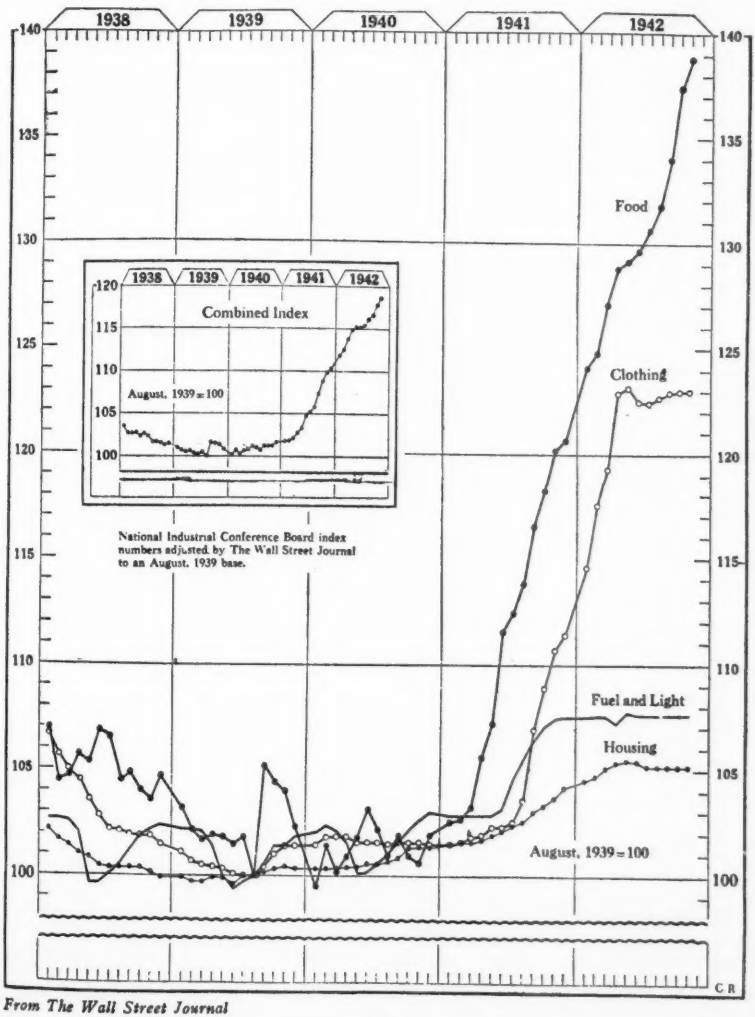
> I think the commission lacks jurisdiction to determine the unliquidated claims of Light & Power and Illinois Iowa Power Company against each other based on alleged causes of action *arising before and outside the act*, and that the motion to dismiss should be granted.

The question of jurisdiction concerned a claim of about $40,000,000 filed by Illinois Iowa Power Company, a subsidiary, against the parent company, as well as certain cross-claims of the parent against the subsidiary. The utilities division of the SEC had previously recommended that the request for an extension of time to liquidate be denied, and that the liquidation, so far as the North

American Company (parent of North American Light & Power) is concerned, be completed under supervision of a Federal court.

In the Federal Water Case, the SEC deviated from the reorganization plan to require that certain preferred stock, bought by directors and officers while reorganization plans were under consideration, should be treated differently from similar stock held by the public—the former to be surrendered to the reorganized company at cost plus 4 per cent interest. (Court decision, See page 259.)

COST OF LIVING CONTINUED TO RISE IN 1942 BUT PRICE CEILINGS SLOWED RATE OF ADVANCE



From The Wall Street Journal

INTERIM EARNINGS REPORTS

	End of Periods	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Nov.	$2.18	$2.84	D23	$ .61	$ .61	..
Amer. Power & Lt. (pfd.) *Consol.*	Nov.	6.02	5.44	10	3.15	1.02	2.08
Parent Co.	June	2.98	4.72	D37	.43	1.23	D65
American Water Works *Consol.*	Sept.	.74	1.16	D36	..	..	..
Parent Co.	Sept.	.21	.49	D57	..	..	..
Cities Serv. P. & L. (pfd.) *Consol.*	Mar.(a)	4.40	5.76	D24	..	..	..
Parent Co.	Dec.	16.56	27.70	D40	..	..	..
Columbia G. & E. (1st pfd.) *Consol.*	Sept.	7.73	11.28	D32	2.01	D.10	..
Commonwealth Edison *Consol.*	Sept.	1.88	2.14	D12	..	..	..
Com. & Southern (pfd.) *Consol.*	Dec.	7.35	8.11	D9	..	..	..
Elec. Bond & Sh. (pfd.) *Parent Co.*	Sept.	4.52	7.47	D39	.99	1.47	D32
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Nov.	11.44	9.42	22	3.22	2.20	51
Parent Co.	Nov.	1.37	1.63	D16	..	..	..
Eng. Pub. Service *Consol.*	Nov.	.95	1.26	D25	..	..	..
Parent Co.	Sept.	D.06	.64	..	..	..	..
Federal Lt. & Trac. *Consol.*	Sept.	1.23	1.66	D26	.27	.38	D29
L. I. Lighting (pfd.) *Consol.*	Sept.	4.46	5.29	D15	1.49	2.04	D27
Parent Co.	Sept.	6.24	6.14	2	1.68	1.62	4
Middle West Corp. *Consol.*	Sept.(b)	.96	.78	24	.41	.37	11
Parent Co.	Sept.(b)	.27	.36	D25	.07	.08	D13
Nat'l. Pr. & Light *Consol.*	Sept.	.57	1.19	D52	.14	.21	D33
Parent Co.	Sept.	.09	.49	D82	..	..	..
Niagara Hudson Pr. Co. *Consol.*	Sept.	.46	.69	D33	D.02	.05	..
North Amer. Co. *Consol.*	Sept.	1.81	1.79	1	.40	.46	D13
Parent Co.	Sept.	1.48	1.58	D6	..	..	..
Nor. States Pwr. (Del.) (cl. a) *Consol.*	Sept.	6.60	7.54	D13	D.03	1.43	..
Ogden Corp.	June(c)	.03	.02	..	..	..	..
Pub. Serv. Corp. of N. J. *Consol.*	Dec.	1.22	2.04	D40	.41	.89	D54
Std. Gas & Elec. (pr. pfd.) *Consol.*	Sept.	10.50	7.71	36	3.09	D.07	..
Parent Co.	Sept.	2.12	1.94	10	..	..	..
United Gas Improvement *Consol.*	Sept.	.60	.87	D31	.13	.15	D13
Parent Co.	Sept.	.50	.82	D39	..	..	..
United Lt. & Pr. (pfd.) *Consol.*	Dec.	6.89	8.78	D21	..	..	..
Parent Co.	Dec.	1.55	3.94	D61	..	..	..
Electric-gas Operating Companies							
Boston Edison	Sept.	2.15	2.28	D6	.54	.43	26
Conn. Lt. & Power	Nov.	2.53	2.93	D14	..	..	..
Cons. Edison N. Y. *Consol.*	Sept.	1.54	2.08	D26	D.01	.14	..
Parent Co.	Sept.	1.45	2.11	D31	.11	.36	D69
Cons. Gas of Balto. *Consol.*	Sept.	4.29	4.34	D2	.78	.98	D20
Detroit Edison *Consol.*	Nov.	1.31	1.98	D34	..	..	..
Hartford Elec. Lt. Co.	Dec.	2.47	2.95	D16	..	..	..
Indianapolis P. & L. *Consol.*	Sept.	2.04	2.77	D27	..	..	..
Pacific Gas & Elec. *Consol.*	Nov.	2.26	..	..	..	..	..
Public Service of Indiana	Nov.	1.76	2.17	D19	..	..	..
San Diego Gas & Elec.	Nov.	.94	1.20	D22	..	..	..
Southern California Edison	Nov.	1.76	2.17	D19	..	..	..
Gas Companies							
Amer. Lt. & Traction *Consol.*	Sept.	1.85	1.89	D2	..	..	..
Brooklyn Union Gas	Sept.	1.76	2.09	D16	D.01	D.11	..
El Paso Natural Gas *Consol.*	Nov.	3.58	3.33	7	..	..	..
Lone Star Gas *Consol.*	Sept.	.91	1.29	D29	..	..	..
Oklahoma Natural Gas	Nov.	3.56	3.52	1	..	..	..
Pacific Lighting *Consol.*	Sept.	3.63	3.37	8	..	..	..
Peoples Gas Light & Coke *Consol.*	Sept.	6.06	5.82	4	1.14	.81	41
Southern Natural Gas *Consol.*	Sept.	1.70	2.23	D24	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Nov.	18.82	13.66	37	4.45	3.00	48
Parent Co.	Nov.	14.50	9.10	59	..	..	..
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	Nov.	8.60	10.43	D17	2.21	2.52	D12
Parent Co.	Dec.	8.62	10.01	D14	1.98	2.31	D14
General Telephone *Consol.*	Sept.	2.64	2.74	D4	..	..	..

D—Deficit or decrease. (a) Three months (twelve months' statement not issued). (b) Nine months. (c) Six months. (d) Eleven months.

What Others Think

WPB Utility Control Moves into The Big Time

ANNOUNCEMENT of the War Production Board through Donald M. Nelson, its chief, on January 20th of the creation of an Office of Power Director under J. A. Krug was widely hailed in the press as the setting up of a "czar"—in the better sense of that term—for the emergency control of the nation's utilities. Despite the emphasis given to power in the title, the new OPD chief will have as his province the Federal mobilization, not only of electric power but also the services of gas, waterworks, and a new jurisdictional acquisition in the form of the communications equipment division, controlling the telephone and telegraph industries.

This step was seen by Washington observers as a trend towards consolidating WPB industrial lines into relatively few major categories—and those, of course, of the most essential nature. In other words, instead of three dozen or more independent industrial divisions competing for scarce materials, the new WPB policy is apparently to concentrate by consolidation a half-dozen or more vitally important industrial and service requirements, such as Army, Navy, Lend-lease, aircraft production, synthetic rubber production, and now—utilities.

There is rumored to be impending a further consolidation of controls over industries supplying the civilian population through the upgrading of the Office of Civilian Supply, now under the supervision of Joseph L. Weiner (formerly head of the utilities division of the Securities and Exchange Commission).

Whether this view of consolidating essential industrial controls into a comparatively small number of major bureaus under WPB is accurate or not, there is little doubt but that the newly created Office of Power Director will enable Mr. Krug, its chief, to talk on even terms with other so-called "czars" such as Rubber Director William Jeffers, Lend-lease, etc.

IN the field of emergency regulation of gas utilities, there was the further probability that Mr. Krug is being given WPB authority to support the requirements of the natural gas industry for pipe lines, which may bring him into conflict during the coming summer with Petroleum Administrator Ickes, who also wants more pipe lines—for petroleum transportation. Since both kinds of pipe lines would thereby be bidding for a diminishing supply of steel, the elevation of Krug might well portend a showdown on the issue of gas *versus* gasoline.

This does not at all mean that Mr. Krug will have his own way in this matter. It does, however, assure the natural gas industry of aggressive representation of its industrial problem in weighing the need for transportation of the various kinds of fuel during the heating season of 1943-1944.

In taking over the control of the communications equipment division, Mr. Krug is assuming for the second time authority over that branch. A little more than a year ago the old communications branch was divorced from the old power branch, then under Mr. Krug, and set up on its own, under the supervision of Leighton H. Peebles. Since then radio has been taken away from the jurisdiction of the communications division, leaving it control of only telephone and telegraph requirements. Apparently it was decided that a union of these utility controls would focus attention on the vital character of public service.

Mr. Peebles will continue in charge of communications work under OPD.

WPB Control of Communications

LEIGHTON H. Peebles, director of the communications equipment division of the War Production Board, addressed the annual meeting of the Minnesota Telephone Association in St. Paul, Minnesota, on January 27th, on WPB rules and regulations affecting the telephone industry. Mr. Peebles confined himself largely to the orders sponsored by the communications equipment division of the WPB.

Mr. Peebles pointed out that his contact with the requirements of the industry started in the summer of 1941 when the WPB was just beginning to curtail the use of critical materials. He added:

> . . . At that time, the communications industries were, for administrative purposes, reporting to the power branch of the WPB, and responsibility was divided between that branch and the Office of Price Administration and the Civilian Supply.

In December, 1941, however, the Supply Priorities and Allocations Board decided that the communications industries were sufficient in scope and importance to warrant the establishment of a separate branch, a unit specifically charged with the duty of supervising the use of critical materials by this industry.

Upon examination it was found that the telephone industry alone had received and used in 1941 between 80,000 and 90,000 tons of copper. In effect this meant that the telephone industry was using between 4 and 5 per cent of all the copper available. When, after Pearl Harbor, the nation embarked on its high-powered production drive for tanks, ships, planes, guns, and ammunition, it became evident that the allotment of copper would have to be curtailed.

THE communications equipment division, formerly the communications branch, was established in January, 1942, Mr. Peebles continued, in order to "restrict the use of copper and other critical metals to the minimum essential to maintain reasonably adequate domestic service and to allocate no material for plant extensions, unless such extensions contributed directly to the war program or were necessary for health, safety, and security of the public." Mr. Peebles stated:

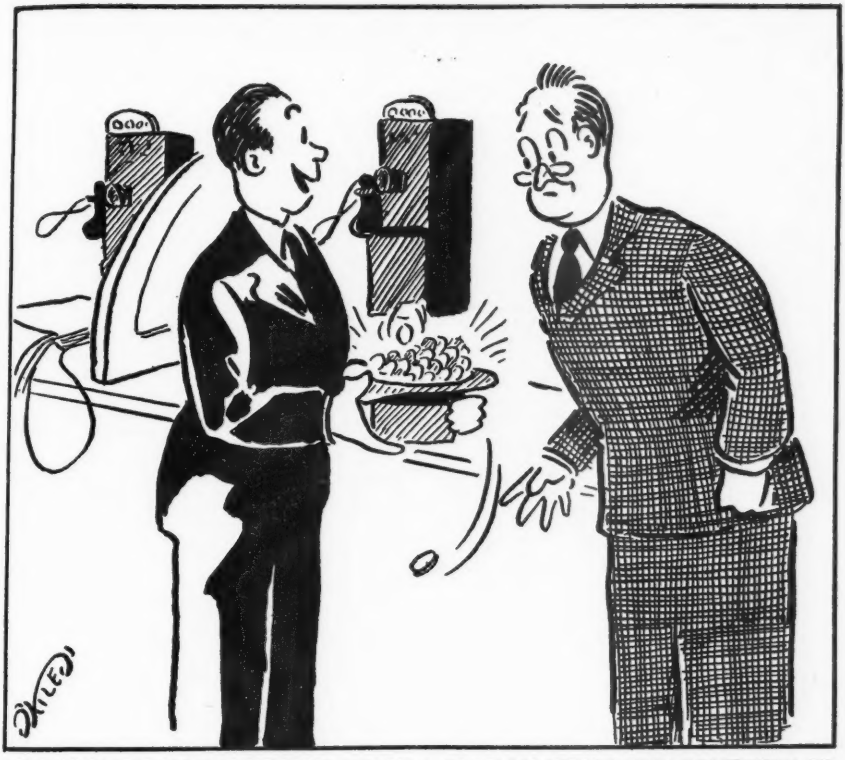
> In approaching this objective, it was realized that not all areas of the country would be affected equally by war activities, such as manufacturing plants and military installations, and that in many areas there existed excess line and terminal facilities. To restrict new service to only those directly connected with the war program and health, safety, and security, would impose a hardship on the public without saving critical materials in those areas where plant capacity existed, but where there was little war or military activity. Therefore, it was reasonable that with certain limitations service should be rendered in such areas even to those not directly connected with the war program.

REALIZING that the use of materials would be curtailed at a time when the demands for service were increasing, Conservation Order L-50 was drafted in collaboration with representatives of operating companies, and became effective March 2, 1942. In effect this order limits the use of new materials and designates the categories of customers that are permitted to be served. The operating companies must decide if a prospective customer comes within the limits of the categories permitted to be served. Mr. Peebles added:

> . . . For the last three quarters of 1942, the telephone companies, under the provisions of limitation Order L-50, have had to deny approximately 300,000 requests for service.

But this wasn't all. Following the limitations and definitions set forth in Order L-50, it became necessary to find the most effective method of completing this order, Mr. Peebles explained. Again, the telephone industry came to the aid of WPB and developed a workable order. He continued:

> An examination of past operations showed that normally several hundred thousand work orders were issued each year. A large proportion of these orders covered ordinary maintenance and repair work and the day-to-day cut-overs and changes brought about



"I KNOW IT'S NOT SUPPOSED TO BE A SLOT MACHINE, BUT SOMEHOW OR OTHER I HIT THE JACKPOT"

by the constantly shifting population and customers' needs. Naturally, it would be an impossibility for us to pass upon all these work orders. Moreover, our approval in most cases would be no more than a "rubber stamp." In view of this, we sought a ceiling below which the industry would be free to operate under the restrictions of L-50.

CONSEQUENTLY, Preference Rating Order P-130 was issued on March 2, 1942. This order established a ceiling at $50 for any one job. This limit proved too low and the order was revised. The new limits for any one job were raised to $2,500 value of new materials, or $5,000 total cost of new and used materials. The speaker explained:

. . . Operating under this order any telephone company whose inventory is not in excess of 27½ per cent of its total use of material for all purposes in 1940, and is operating within the limitations of Order L-50, is entitled to use a priority of AA-5 to obtain its requirements of materials for maintenance, repair, operating supplies, and operating construction up to a total material value of $2,500. In the event of an emergency caused by an actual breakdown of facilities, the operator may apply a preference rating of AA-2X. The use of this rating is limited not to exceed 30 per cent of the material which could be used by the operator for any purpose in each calendar quarterly period. . .

The industry can make what it has do by turning back to the "nation's stockpile" all superfluous inventory and junk, Mr. Peebles said. And he added:

. . . The basic formula for the accomplishment of this objective is given in Order P-

130. The formula will require revising and refining as we know more of the needs of each individual company. . . . We hope shortly to be able to accomplish an amendment to P-130, together with reporting forms, from which, when returned, we expect to be able to determine the minimum active working inventory necessary for each company. Any excess inventory we propose to divide between that which is usable and that which is junk. The usable part of the inventory will be listed and made available for sale to other operators through the manufacturers who are required to examine the list and not supply new material if usable material is available in some operators' excess inventory. The manufacturers of equipment have patriotically volunteered to perform this service without cost to the government and without charge to the operating companies.

THE WPB, Mr. Peebles added, recently issued Order L-148 which assures that all companies in the industry have equal treatment and that all shipments of materials are directed to the use most essential to the war program. There are other ramifications to this order. For example, it requires

. . . that manufacturers, distributors, and dealers be supplied with a priority rating of A-1-a or higher before they may sell, lend, lease, rent, deliver, or otherwise transfer wire communications equipment.

The order specifically permits, however, the transfer of such equipment to the manufacturer for repair or storage and the return of the equipment to the owner after repair or at the end of the storage period, and also permits a manufacturer to purchase such equipment without a rating for reconditioning or resale on a rating of A-1-a or higher.

As a result of this order, material shipments have been directed to places where the equipment was most essential.

Mr. Peebles also mentioned General Conservation Order L-204 which stopped the manufacture of telephone sets on and after November 16, 1942. The order was based on a survey of unused telephone sets in the hands of manufacturers and operating companies. Mr. Peebles cited the following figures:

. . . The survey showed some 3,000,000 sets of all types and kinds available for use as of August 31, 1942. Since the stations added in 1941 totaled approximately 1,500,000 and the 1942 additions are estimated to be approximately 1,300,000, over half of which had been added prior to the survey, and since our estimated additional stations during 1943 total approximately 500,000, it appears that there are enough sets now manufactured to last for some time, provided there is no great demand for replacement due to mortality of sets now in service.

IN concluding, Mr. Peebles emphasized the tremendous impact these limitation and conservation orders have had upon the communications industry. He cited figures to show the decreased use of copper as a result of these orders. For the years 1926 to 1941, inclusive, he said that approximately 55,000 tons of copper were used. In 1941 the use was between 90,000 and 100,000. The use of copper in 1942, as a result of the L-50 order, was approximately 35,000 tons. And in 1943 the estimated use is from 12,000 to 15,000 tons.

By careful determination and the full coöperation of the telephone industry, the nation's copper reserve has not been depleted, he concluded. Instead, it has been diverted where it will do the most good—to the making of munitions.

Darkness for Victory

THE difficult problem of complying with blackout and dimout restrictions on lighting by the electric utility industry was discussed in a very comprehensive fashion by Tom P. Walker, president of the Council of Electric Operating Companies, at a technical meeting of the American Institute of Electrical Engineers at New York city on January 26th. The adjustment of the electric service business to a war basis was not nearly so drastic nor spectacular as that of other large enterprises, Mr. Walker said.

There were, however, multitudinous complications which the industry met

with quiet efficiency. In almost every case electric power is a minor item in the cost of the manufactured product, but it is an indispensable item.

In the field of lighting it became necessary for the electric industry to devise on one hand plans for coördinating with the "blackout" and "dimout" programs of the Office of Civilian Defense, while at the same time insuring proper and efficient service to production areas so as to keep up the scheduled tempo of war work. Further than that, the industry had to overcome an understandable tradition against any such general interruption of service as a blackout. Mr. Walker stated on this point:

> Our constant pride is continuity of service and the high service standards we have always maintained. Generating and line capacities have been designed with large and expensive factors of safety so that service will be available in any probable emergency. There could never be the excuse that the shelves were bare. Emergency crews are ready on a moment's notice through fire, flood, or blizzard to tie up broken lines. Repair gangs in the seclusion of power plants work long hours to get a piece of crippled equipment back on the line before a single customer, no matter how obscure, is conscious of a problem. Service crews leap instantly to every case of trouble. Continuing surveys reveal impending voltage difficulties and service hazards so that conditions may be remedied no matter what the cost. Ours is not a business of selling bare kilowatt hours but one in which only the highest service standards are acceptable. Our end product is not simply power but the efficient performance of the job the power is set to do. It is the plus values that go into electric service that make it the vital force it is today. The industry's response to blackout plans, which in the main are a costly contradiction of normal standards, has been in this spirit.

SINCE the complete blackouts have so far been only a temporary measure during air-raid drills and precautionary alarms, the effect on company revenues has been inconsequential. This is in contrast with the industry's experience with the dimout or so-called "brownout" (in the coastal areas).

However, there are technical factors which have to be considered. Mr. Walker said of them:

> The sudden dumping of about 60 per cent of the station load within a matter of minutes creates such a tense situation in the power house as few laymen can appreciate. Trained employees go into action at the first shriek of the siren, and what could be a serious shock to service is made to appear casual to the factory and the home. At the all-clear signal, when the load snaps back to about 90 per cent of its previous level, a similar condition must be met. These operations require skill and expertness, traditional attributes of electric utility employees.

Precautionary measures to protect power service facilities have been developed by the industry in coördination with plans of the Federal Power Commission, the Office of Civilian Defense, Provost Marshal's Office, and Federal Bureau of Investigation. Mr. Walker said that military and defense organizations have done "an outstanding job" in demonstrating the value of and need for the blackout.

Concerning the need for a national dimout, which is at present reported to be under consideration of the War Production Board, the speaker said that "only those skilled in military matters should have the right to say whether or not a dimout should be imposed." It is not a job for an arm-chair strategist. A frank disclosure of all factors, however, may help in reaching an intelligent decision.

For example, we all understand and approve the elimination of sky glow along our coasts to prevent the silhouetting of ships preyed upon by submarines. There is the accident record to be considered and effect on civilian morale, in which the British experience has been most enlightening. There is the economic factor, first as it affects the consumer and again as it affects the utility. Mr. Walker stated:

> Dimout regulations do require large expenditures of money and also some critical materials. In these, the electric utilities have shared to a substantial degree. The preparation of a street-lighting system for the dimout is an expensive operation and, in most instances, the electric company stands the entire cost. Merchants lay out large sums for window screens and shades, and most suffer severe losses in business. Outdoor advertising agencies, sports events, and similar activities are practically eliminated. People

do not move around when it is dark. They do not go to the movies, frequent restaurants, or window shop as they are wont to do. As a result, many small businesses face drastic cuts in volume. Neither do people drive their cars which may be all to the good except for those who make a living on their maintenance and repair.

For the electric company there is a substantial loss in revenue from these decreased uses. In New York city alone during five summer months, this loss was about $500,000 a month with little saving in expenses. In the winter months, this loss will be greater. Along the Pacific coast, the loss is about that same figure. For the country as a whole, the amount could be several million dollars a month.

THE question naturally arises whether the dimout does save electricity, which is desirable in these days of scarcity. Mr. Walker explained that aside from some saving in fuel and wear and tear on equipment, there is no direct saving in electricity in a situation where the capacity is available to supply the demand. (During the normal off-peak evening hours of most electric utilities, such is usually the case.)

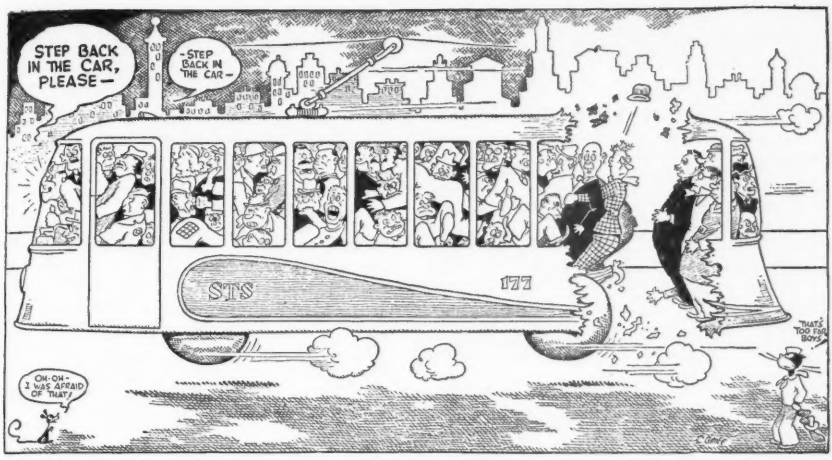
In the final analysis, however, the speaker said that public safety must always be the paramount consideration and that negative factors did not justify the smallest gamble that would contribute to a destructive bombing.

Discussing the "brownout," or curtailment of electric energy to save fuel and transportation, Mr. Walker stated:

> Curtailment of electric power is not now necessary in any section of the United States because of the lack of capacity to supply all war loads as well as civilian needs. In spite of fears, misgivings, and predictions to the contrary, the electric industry to date with perhaps two minor exceptions has been able to furnish all the electric power necessary to supply the needs of the arsenal of democracy without the rationing which has been necessary for other products. Through the voluntary pooling of facilities already installed, the intelligent coördination by the power division of the War Production Board, and through additions in generating capacity, the industry has accomplished almost the impossible in this regard. It is not for us to know what the future may bring....
>
> If our military and civilian officials determine that a nation-wide brownout is essential to public safety, the utilities will be prepared to "merchandise" the plan to the public. But you of the engineering fraternity will want to know some of the questions which will be raised and also something of the cost factors involved.
>
> If rationing of electricity is necessary to save oil in eastern states where people are suffering because they cannot heat their homes, then there will be no question, but if it is shown that there are other fuels, which could be substituted for oil, the public will contend that the other fuel be used before their electricity is rationed. If it is transportation that must be saved, and there are commodities being hauled or passengers carried whose urgency is not so great as that for lighting in homes and places of business, they will want an explanation. Will there be rationing from a plant located at the mouth of a coal mine where no transportation is involved or near by so that a short barge haul can supply fuel readily? Should power be rationed in the great Southwest where natural gas is plentiful or from hydro plants where the water in its course to the sea can do useful work with no substantial use of fuel or transportation?
>
> The answer to all these questions may very well be "yes" after all the factors are weighed, but they should be faced squarely. If they are left unanswered, there may result the same confusion which other vital rationing programs have created because people just did not understand. Such confusion and misunderstanding could very easily destroy confidence in other very worthy rationing measures. The electric industry will utilize its facilities including some quarter of a million loyal, patriotic employees to make the program understood by all the public, and the Council of Electric Operating Companies would welcome the opportunity to coördinate these facilities of the industry to that end.

THE speaker said that it was very difficult to estimate the amount of reduced revenues which the electric utility industry would experience if a nation-wide brownout were put into effect. Incidentally, the government would suffer to a much greater extent because present taxes in some instances absorb as much as 80 per cent of net earnings. Furthermore, the electric company would be called upon to make costly changes in street-lighting systems and to assist merchants and home owners to rearrange their facilities.

There is at present a genuine and well-rooted demand in the home for more and more light. The merchant knows that the customers are attracted to the



best-lighted store. It may be that a temporary denial of such free use of lighting may over the long range be the means of increasing its use when the restrictions are removed.

—F. X. W.

Small Power Plants Join the War Effort

"WHETHER he likes it or not, the manufacturer who has an isolated generating station will probably be interconnected with some power company before the war is much older."

With this warning, C. E. Bennett, Federal Power Commission engineer, writing in the January issue of *Industry and Power,* sums up a major problem of the concern which has hitherto considered its generating plant as an adjunct of its own operations alone.

"As long as a manufacturer has sufficient power in his own plant to meet his manufacturing requirements, but does not have excess capacity that can reasonably be used for other war purposes, he may continue his operations with little realization of the changing conditions of power supply," the writer pointed out. He stated:

> As soon as he has need for a greater amount of power than can be supplied from his own plant, or whenever his reserve machines are needed to help carry loads of other war industries in the area, he will suddenly realize that he can no longer operate his plant solely in accord with his own interests and desires. His power plant is as much a war implement as a new tank destined for service overseas. From now on, he has the obligation to consider and use his plant as a unit in the nation's war machine.

Changing conditions incident to war have brought a new outlook on the question of equipment reserves also, Mr. Bennett observed. Power executives have learned, or are learning, he said, that just as civilians accept greater risks when they become soldiers, more risks must be assumed with machinery. "Most utilities are fortunate if they can maintain 10 per cent generating reserves, as contrasted with 15 to 30 per cent maintained just a few years ago," he added. This means that those in operation are being made to work harder, and he cited an electric utility company that reported its ratings of machines have been stepped up an average of 20 per cent.

"Such a procedure points the way in which a lot of the war load will have to be carried," he said. Mr. Bennett continued:

> In contrast to . . . peace-time conditions, the power needs of a manufacturing plant must now be considered an integral part of all the power needs of the region. The output of the manufacturer's generating station may have to be pooled to become an integral part of all the generating equipment of the area—all because of an increasing need of power for war production and a growing scarcity of generating equipment.
>
> The manufacturers of heavy electrical machinery have the equipment in their manufacturing plants working to capacity in the production of war goods. With every resource concentrated on production, with most of the departments working three shifts a day, and with all the skilled mechanics who can be recruited at work, the manufacturing plants can turn out only a certain number of turbines and other equipment in a given time, and that number falls far short of the need.

As a Federal engineer Mr. Bennett displays a characteristic outlook of the times. Illustrative of this viewpoint, which is obviously hinged on war conditions in the present case, but shows signs of being carried over into post-war conditions on some sides, is the following:

> When the government decides that the power company is to get a large generator instead of several manufacturers getting small ones, the decision doesn't mean that the utility can do as it wishes with the machine—as it might have done when the machines were for sale to anyone who wished to buy them. In those days, the decision to purchase was a matter of economics. Under war conditions, the machines are "allocated." That is just another way of saying that the power company is, in effect, a trustee selected to operate the new turbine generator on an interconnected system because that is the place where the machine can advantageously turn out more kilowatt hours per year than anywhere else. The power company's obligation is to operate the machine in the way that will contribute most to the war effort. That may, or may not, be the most profitable way. Witness, for instance, power companies in the southeastern states turning off sign lighting, store lighting, street lamps, and other high-priced services in order to keep the textile mills and the aluminum plants running. Another example is a power company rationing its own customers and selling energy to a competitor for use in a war industry. Sometimes the companies don't like such arrangement, but they recognize that it's the way to use their power plants most effectively to win the war. They're doing their bit—for the most part, willingly.

As to results that may be expected from the resources of small plants, Mr. Bennett points out that

> Generating capacity tied up in industrial plants is truly large. The Federal Power Commission survey of industrial plants made at the end of 1941 listed some 4,000 plants with a total installed capacity of 10,350,000 kilowatts. The total load on the plants taken as the sum of the noncoincident peaks was about 8,000,000 kilowatts. Thus, in industrial plants of the United States the margin in reserve capacity and unused machines was approximately 2,350,000 kilowatts. If this could be utilized by interconnection, the effect would be the same as though 2,333,333 kilowatts of new turbine generators capacity were manufactured and installed for use in the war effort. What this means in terms of the country as a whole may be seen by considering that the total net increase of generating capacity in electric utility plants during the year 1936 was 490,000 kilowatts and will be approximately 2,600,000 kilowatts in 1942. Of course, not all the spare capacity in manufacturers' generating stations is available for war use. Recent partial compilations indicate that increasing power demands have made serious inroads on surplus capacity in isolated plants. In some cases reserves have been reduced below a safe figure. Probably the total capacity now available through interconnection is considerably below the figures cited above. And not all the capacity available "on paper" can actually be realized. Some of the plants are too remote from utility systems to justify interconnections. In others, the margin is too small. Still others are located in areas in which the power is not needed as yet. But it seems safe to say that should the need for generating capacity become sufficiently acute, the capacity to be picked up by interconnections may be well toward 1,000,000 kilowatts. That is a lot of power in war time. So there will be interconnections, and yet more interconnections.

Whatever the total capacity realized by this process, Mr. Bennett points out that the existing generating plants will bear the brunt of the war's needs for the simple reason that new generating capacity can be installed, even under most favorable conditions, only a little at a time—if at all.

WHAT OTHERS THINK

British Propose Scotch "TVA"

An industrial power development similar to America's Tennessee Valley Authority will arise among the crags, glistening lochs, and erosion-scarred valleys of the Scottish highlands, a recent London announcement indicates.

As in the case of the TVA, the project for industrial rehabilitation of the highlands has its bitter opponents. But the British cabinet has let it be known that a bill soon will be introduced embodying recommendations of a special Scottish committee headed by Lord Cooper.

The committee urged that the government undertake such hydroelectric development of five northern counties of Scotland as would make possible expansion of industry and arrest the steady decline in population.

The government's decision ends twenty years of effort by private interests to acquire hydroelectric rights in northern Scotland. The last such plan was defeated by Parliament last year.

Opposition has come partly from the masses, but more effectively from Scottish collieries which objected to competition from hydroelectric power, and from ducal and other landed interests who complained that the scenic beauties of Scotland would be impaired.

It has been alleged that the latter class has determined to resist agricultural and industrial development of the highlands, including 3,430,000 acres devoted to deer forests which are rented annually to British and American millionaires.

The five northern counties of Scotland now have a population of 290,000, compared to 388,000 a century ago.

Political correspondents pointed out that the cabinet would not have approved Lord Cooper's report had it not been assured sufficient Conservative party support to insure passage.

The committee conceded that it would be impracticable to carry electric light and power to every tiny hamlet in the highlands owing to cost of transmission. Development would, however, aid industries engaged in production of calcium carbide and calcium cyanamide, and electro-metallurgical industries producing aluminum and magnesium and refining copper, zinc, canadium, and cadmium for the production of ferro-alloys.

Notes on Recent Publications

Health Film Series. Recent releases of this health maintenance moving picture program include "Take Care of Yourself," "The Cold Bug," "Food Keeps You Fit," and "Stay on the Beam." Films are available for a moderate fee from Commercial Films, Inc., 1800 East 30th Street, Cleveland, Ohio. They consist of sound slide films produced and dramatized in collaboration with C. O. Sappington, M. D., editor of *Industrial Medicine.*

Public Utility Regulation: A New Chapter. By R. W. Harbeson. *Harvard Business Review.* Summer, 1942.

War Protection of the Gas Industry. Prepared by C. George Segeler. Issued by the American Gas Association, 420 Lexington Avenue, New York, N. Y.

This document was furnished to each member gas company; additional copies may be purchased by members of the association for $2.50 and $5 for nonmembers.

This book has been issued in loose-leaf form so that up-to-the-minute changes can be made as new information becomes available. This will be sent to purchasers of the book without further charge. The book is divided into two principal parts, "Protection against Enemy Action" and "Emergency Procedures After Damage Occurs." All parts of the problem are covered, including sabotage protection, air-raid and artillery protection and procedures, training of personnel, etc. An important part of the book is a description of the actual damage to gas company property which has been reported from English, European, and other foreign sources. The publication is issued under the auspices of the Committee on War Activities.

The March of Events

Mileage Cuts Ordered Prepared

BUS and taxicab companies all over the country were instructed recently to prepare three alternative plans by which service could be curtailed 10, 20, or 30 per cent on short notice. They were asked to submit to the Office of Defense Transportation three plans, the first to eliminate 10 per cent of all presently operated rubber-borne vehicle miles, the second to eliminate 20 per cent of the mileage, and the third to eliminate 30 per cent.

In event of emergency, the ODT thus would be able to issue an order calling for "Plan No. 2 for ten days," for instance, in the area where the emergency existed, and covering the emergency's expected duration.

Operators in 17 eastern states and the District of Columbia were asked, "in view of the imminently critical fuel situation," to submit their plans no later than February 8th. Operators in the 31 other states must submit their plans by February 22nd.

Almost 2,000 bus drivers, motormen, and conductors are needed in the local transit industry. ODT director of division of transport personnel, Otto S. Beyer, recently disclosed that it is expected that by May 8,850 jobs will have to be filled in the industry. Passenger loads are growing. Figures submitted by the American Transit Association showed that passenger traffic of 87 companies increased 36.5 per cent from November, 1941, to November, 1942. Mr. Beyer attributed the increase to curtailment in use of automobiles and to general increased employment.

WPB Planning Dimout

THE War Production Board's power division recently was reported considering an order to dim the bright lights of America's main streets, but no decision had been reached as to whether the step was necessary.

Such an order, curtailing the lighting of store windows and theater marquees, would be aimed at saving the coal required in most sections to produce electric power. A spokesman, commenting anonymously, said that there was no general shortage of power at present. He said the WPB had been studying the situation for several months.

Seacoast areas of the country already have dimouts, but these are aimed principally at defense rather than conservation of power.

Gas Economy Urged

IN view of a serious gas shortage in western and southern New York and northern Pennsylvania, Donald M. Nelson, chairman of the War Production Board, on January 23rd called on residential users of natural and mixed natural gas in those areas to reduce their gas consumption in the next ten weeks by 25 per cent.

Only through the reduction can war production plants be assured of an adequate supply for uninterrupted operation, Mr. Nelson declared. Already some have been forced to curtail production, he said.

He suggested that the residential consumers should not heat their houses over 65 degrees, close off and do not heat any room not absolutely needed, not use range ovens for heating purposes, reduce the use of hot water to an absolute minimum, and prepare simple meals which require a minimum of cooking.

"The power director of the WPB in collaboration with the armed services and other Federal agencies is doing everything possible to dispatch gas to those regions where it is needed most," Mr. Nelson said. "These efforts alone, however, cannot relieve the situation quickly enough to safeguard continuance of operations in essential war plants in the area. Only the residents of this area can bring instantaneous aid to those plants.

"The great bulk of the gas sold by the gas company goes to residential consumers, for use in cooking, space heating, and hot water heating. Compulsory gas rationing of domestic consumers is undesirable, and I believe unnecessary. I believe that if residential consumers are told the facts they will willingly ration themselves."

TVA Wage Rule Broadened

THE board of directors of the Tennessee Valley Authority was authorized by the War Labor Board on January 31st to approve or disapprove applications for wage and salary adjustments for employees of contractors engaged in its construction work.

The order broadened previous authority for the TVA board to rule on wage and salary adjustment for its own 41,000 employees. The TVA has contracts with about 100 construction contractors who employ about 2,500 workers.

Alabama

Discount to Be Abolished

In a tense atmosphere frequently punctuated with sharp verbal exchanges between members, the state public service commission in a special meeting on January 28th acted to abolish the 10 per cent discount charge on electric and gas bills and made other sweeping changes affecting operations of the rate-fixing body.

Heated clashes between newly installed Associate Commissioner Gordon Persons and Commission President Hugh White were touched off as Persons offered a series of resolutions to abolish the commission's Birmingham office, investigate records of all utilities under its jurisdiction, dispense with straight-line or "private" phones, and do away with passes issued to commissioners or employees.

Impeachment of any commissioner wrongly using a pass was threatened by Persons during the discussion of whether passes would be called in and canceled or permitted by a majority vote of the commission.

Action of the commission in abolishing the position of chief public service engineer, held for several years in the Birmingham office by I. F. McDonnell, brought more verbal clashes with White, who voted against this resolution, charging that Associate Commissioners Persons and Clint Harrison were violating the state merit system in so doing.

With Commission President Hugh White not voting, the resolution to abolish the discount was passed by the votes of Commissioners Persons and Harrison. The commission also voted to "immediately start an investigation of records of all public utilities under its jurisdiction to determine the classification of all customers of these utilities as to monthly and annual kilowatt-hour consumption."

Under the 10 per cent discount resolution, customers of gas and electric companies, regardless of whether they paid their bills within the 10-day specified period after being rendered by the companies, would pay only the net amount of the bill.

Plans calling for division of work on the commission would place Harrison in charge of transportation, put public utilities in Persons' department, and place tariffs under President White.

Arkansas

Pool Meets Emergency

For the second time within a month, the heavy transmission line of the Ark-La Electric Coöperative, Inc., carrying power from Grand River dam in Oklahoma to the Lake Catherine aluminum plant, went out of service on January 19th and the Southwest power pool was called upon to supply the entire load.

This was disclosed during the Federal Power Commission's investigation of the Southwest power pool member rates at Little Rock.

Plant Completion Sought

Governor Adkins said recently he would make efforts to have the Lake Catherine power plant finished soon and keep materials already shipped there from being moved to other projects. He said he had asked officials of the Defense Plant Corporation, Senator John L. McClellan, Congressman W. F. Norrell, and Donald Nelson, director of the War Production Board, to coöperate in having the plant finished. He said it might never be finished if materials, now hard to obtain, are moved.

The power plant is about 85 per cent complete and 95 per cent of the materials have been contracted for, Governor Adkins said. When finished it will be one of the cheapest power-producing plants in the country, he said.

Governor Adkins explained this cheap power, to be produced from gas, will be a decisive factor in keeping bauxite and aluminum plants of that area operating after the war. The government-owned plant will be managed by the Aluminum Company of America when completed.

Commission Explains Appearance

Charging it would be "an unconstitutional invasion" of state boundaries and an encroachment on the functions of a state regulatory body by a Federal bureau, the Arkansas Department of Public Utilities early this month told the Federal Power Commission at an electric rate hearing in Little Rock that the commission has no authority over intrastate rates charged in that state.

"Regulatory bodies of the states and nation should not, under any pretext or guise whatever, attempt during the emergency to extend their powers beyond the well-defined statutory and constitutional limitations," P. A. Lasley, attorney for the commission, asserted in making the charge.

The FPC has been holding a hearing in Little Rock since December 14th into rates charged by the Arkansas Power & Light Com-

pany and the Southwest power pool for supplying interim power to a huge aluminum plant in Arkansas.

Lasley asked Trial Examiner Frank Hampton to eliminate from the record of the hearing and to disregard all testimony that deals with rates charged by AP&L to the Defense Plant Corporation.

California

Condemnation Suit Filed

DIRECTORS of the Sacramento Municipal Utility District moved on January 21st to acquire the electric distribution system of the Pacific Gas and Electric Company for the Sacramento area.

The district filed a condemnation suit in superior court based on the state railroad commission's evaluation of $11,632,000 for the system, but Stephen W. Downey, legal counsel for the district, said the state supreme court would be asked to review the commission's findings.

Sacramento county voters in 1934 approved a bond issue of $12,000,000 to finance the purchase or construction of an electric distribution system. Litigation has gone on since.

The commission's decision fixing the valuation of the PG&E property at $11,632,000 was handed down last November after nearly eighteen months of hearings and investigation. The company had asked $18,302,891, and the district countered with $9,963,000.

Rate Cut Pleas Heard

VARIOUS so-called civic groups interested in obtaining reductions in water and power rates were given a hearing last month before the Los Angeles Board of Water and Power Commissioners.

William A. Pixley, managing director of the Property Owners Association, and Earl C. Craig, representing the Citizens Committee, were among those who addressed the commissioners.

Several speakers argued that a flat rate for both water and power should be given to both large and small consumers, contending that the smaller consumers were building up a profit which was passed on to the larger users. Bigger rebates for victory garden water users also were advocated.

Substantial profits reportedly made by the municipal utilities this year should be turned back to the public, several speakers further maintained.

FPC Approves Change

THE Federal Power Commission last month announced its approval of plans of the Southern California Edison Company, Ltd., of Los Angeles for disposition of over $11,000,000 established as excess charges over original cost in the company's studies for reclassification of accounts.

As of January 1, 1937, the effective date of the commission's uniform system of accounts for public utilities, the Southern California's plant accounts included the amount of $4,775,345 in Account 100.5, electric plant acquisition adjustments, and $7,174,188 in Account 107, electric plant adjustments. These amounts have been reduced by subsequent retirements of property to $3,927,082 and $7,172,891, respectively, as of December 31, 1942.

The FPC's order stated that the Southern California Company's proposed plans were in conformity with sound principles of accounting and the commission's uniform system of accounts, provided the amortization charges are made to Account 537, miscellaneous amortization.

Natural Gas Rates Reduced

NATURAL gas rates have been reduced, effective February 15th, throughout the territory served by Pacific Gas and Electric Company. Users will save $1,450,000 a year on the basis of the company's current business.

Rates are being lowered by the utility despite substantial increases in operating costs and taxes and in sharp contrast to the rising trend of other commodity prices.

This is the second gas rate reduction placed in effect by the company within the past year and the seventh major rate cut since the introduction of natural gas service in 1929-30. When the change was made from manufactured to natural gas in those years, ratepayers were benefited by an annual saving of $8,139,000 in their bills because of the higher heat value of natural gas.

The lower rates, effective on all meter readings on and after February 15th, were fixed after an exhaustive study of the natural gas rate structure by the state commission and PG&E engineers. The new schedules represent a reclassification of city, suburban, and rural areas, based chiefly on the number of customers served and the density of customers in relation to investment required to provide the service. Population, heat value of natural gas supplied, earnings, and other rate-making factors also were recognized in determining the amount of reductions.

Because of these factors, the percentage reduction is not the same in all cities and communities but varies, being generally greatest for those communities where rates were relatively high.

The total reduction of $1,450,000 represents 5 per cent of the company's annual gas revenue from all residential and commercial customers.

District of Columbia

Rate Boost Overruled

DISTRICT Court Justice F. Dickinson Letts on February 1st ordered the Washington Gas Light Company rate case returned to the public utilities commission, directing that the commission "afford the President's representatives the opportunity to fully test the inflationary trend, if any, which the proposed increase in rates may portend."

Justice Letts' decision followed an OPA appeal from a commission order which permitted the gas company to increase its rates by approximately $200,000. Notification of the rate increase was given the government October 15th. The rates were increased November 16th.

The effect of the recent ruling was to vacate the commission's order raising the rates. Legal counsel for the gas company, however, indicated it was possible that the present rates would remain in effect pending an appeal of the district court decision to the United States Court of Appeals.

Branding certain commission actions in the hearings as "arbitrary and illegal," Justice Letts wrote:

"True, some of the evidence offered by the appellants to broaden the scope of inquiry was received. I think upon the record it is clear that the commission regarded the inquiry within narrow limits and within the scope of the order of March 20th as interpreted by the commission and that the commission closed its ears to the insistent demand of appellants to give consideration to the new factors required by the act of October 2, 1942 (a Price Control Act amendment). In that respect I find that the action of the commission was arbitrary and illegal." (See page 257.)

Employees Not Exempt

ANY request for deferment of employees of the Capital Transit Company because of the nature of their work will be denied because of a policy of the Selective Service System to refuse blanket deferment for any employee group, Selective Service Director William E. Leahy declared last month.

Leahy's statement was made following a conference with representatives of the Federation of Civic Associations, who declared there is not any need to give draft deferment to transit company motormen and mechanics as long as there are hundreds of Negroes willing and able to fill the vacated positions.

The Federation representatives charged that the transit company is using every means at its disposal to avoid the employment of Negro motormen and bus operators as directed by the President's Fair Employment Practices Committee.

The Federation urged that Selective Service officials deny any request for deferment of transit employees on grounds of man-power shortage until the company abandons its alleged "discriminatory employment practices."

Florida

Utility Accepts Rate Cut

PETER O. Knight, president of the Tampa Electric Company, on February 3rd announced the acceptance without appeal of the decision of Circuit Judge Ira A. Hutchison of Panama City upholding the Tampa utility board's order reducing electric rates 30 per cent.

More than $1,500,000 is held in escrow by the circuit court, it was estimated, and will be distributed to the company's customers.

Iowa

Utility Appraisal Sought

THE city of Des Moines has asked the Federal Power Commission to make an appraisal of the gas and electric utility properties in that city for the twin purposes of rate making and establishing a basis for possible municipal purchase and operation.

That was revealed on January 25th as the text of a letter to the FPC was made public, and as the city council again discussed the utility question. In the letter, City Solicitor Fred T. Van Liew, writing upon instructions from the city council, asked whether the commission "has authority to make an appraisal" of the utilities.

"If your reply is in the affirmative," he continued, "the city of Des Moines would like to have an appraisal or valuation made covering the electric system in Des Moines and also the gas system, with separate valuations for each."

Van Liew wrote that the valuation was wanted for rate-making purposes or "as a basis of purchase in the event the people of the city would vote in favor thereof."

Lloyd Waddell, president of the newly

formed Public Service Commission, Inc., to promote municipal purchase of the gas and light utilities, subsequently announced that petitions were being circulated in behalf of a Federal Power Commission study of the utility properties.

The petitions asked that the council pass a resolution "urgently requesting" the FPC to study the utilities and "also recommend how much lower the local gas and electric rates should be."

Waddell wrote the councilmen that his group has made "hundreds of contacts" to give citizens information about the utilities and finds they "willingly sign" the petitions after their questions are answered.

Michigan

Get Natural Gas

ALL 134 cities and villages to be served natural instead of artificial gas by Consumers Power Company through the new 250-mile Panhandle Eastern Pipe Line Company's trunk main will have been changed over by April 1st, officials of the Consumers Company announced last month.

Changeover work has been completed in the Pontiac, Flint, and Jackson areas and was scheduled to begin in the Kalamazoo area and at Marshall early in February. The one hundred and forty trained servicemen were reported winding up their house-to-house adjustment work in Jackson made necessary by the fact that natural gas produces about twice as much heat as the artificial fuel.

In addition to Kalamazoo and Marshall, changeovers are scheduled for Galesburg, Parchment, Schoolcraft, Vicksburg, Bangor, Decatur, Hartford, Lawrence, Lawton, and Paw Paw. When the work is completed Consumers will have approximately 150,000 natural gas users in addition to the customers in the Lansing, Bay City, Saginaw, and Midland areas who have been receiving Michigan natural gas for several years.

Utility Bill Submitted

PUBLIC utility companies would be denied the right to submit bills for any services not yet rendered, under a measure introduced in the state legislature last month by Senator Jerry T. Logie, of Bay City.

Utility representatives in Lansing said the only company affected was the Michigan Bell Telephone Company, which collects telephone rentals a month in advance.

Nebraska

Power Bill Offered

FOR the alleged safeguarding of the interests of Omaha and its power services, a bill was introduced in the state legislature last month by Sidney J. Cullingham, Peter Gutoski, and Charles Tvrdik, empowering that city to set up a people's power commission with authority to acquire existing privately owned utilities located within and without the city if contiguous in character, and to operate the same as a benevolent trust for the benefit of the public.

The measure would definitely remove present authority of the Metropolitan Utilities District to take over and operate it. Cullingham, chief sponsor, issued a statement to the effect that the separate power commission plan has operated successfully in certain other cities.

Two major items were said to be apparent: Desire to remove the power company from the reach of Consumers, if possible, and strip the Metropolitan Utilities District of this child should the legislature make commission adoption possible in Omaha.

The bill provides for a 6-man commission with no members serving more than two 6-year terms. Utilities acquired by the commission would be subject to state and local taxes, although utility purchase bonds would be exempt.

"I believe the plan is essential to safeguard the best interests of Omaha in view of Federal orders for dissolution of the American Power & Light Company, owner of the Nebraska Power Company," Cullingham said.

He added that there are but two prospective buyers of this major Omaha utility: the city of Omaha and the Consumers Public Power District.

Union Bill Introduced

LEGISLATION which was reported to hark back to a dispute between the Lincoln city council and the International Brotherhood of Electrical Workers in regard to collective bargaining was introduced recently by Senator Craven. In LB 207, he proposes to give to the directors of power districts and governing bodies of cities and towns operating power or water plants or engaged in commercial business of any sort, authority to bargain collectively with representatives of power and water plants.

It is Craven's theory, based, he said, on court

decisions, that such measure, if enacted into law, will supersede any charter provision. When IBEW representatives undertook to procure a collective bargaining agreement with the Lincoln council which was applicable to certain water and light employees affiliated with that union, City Attorney Kier advised that, under the charter, the council is not vested with power to so recognize any outside agency for collective bargaining.

New York

Commission Interference Charged

THE Niagara Falls Power Company asked a state supreme court justice on January 25th to set aside a public service commission rate for power furnished to 17 Niagara frontier defense plants and stop the state agency from interfering with a rate ordered by the Federal Power Commission.

The company contended before Justice Francis Bergan, who reserved decision, that while each commission has authority to issue rules now in force, their collective effect is to confiscate company property at the rate of $1,000,000 yearly.

The suit involves rates charged for 112,000 kilowatt hours of electricity from a diversion of 12,500 feet of water per second from the Niagara river, under a license granted by the Federal Power Commission.

The company said the FPC stipulated that it charge 4 mills per kilowatt hour (the company's average rate) for this electricity, pay its out-of-pocket costs, and put the balance into a fund which eventually would be used to cut the company's net investment in the plant. This would reduce the cost to the government, should the latter want to take over the plant at the close of the 50-year license period.

The state commission, however, ordered the company not to charge more than 2.78 mills per kilowatt hour. The company asserted it therefore has had to make up the difference of 1.22 mills per kilowatt hour, and that this is costing it $1,000,000 yearly.

A water-power control bill was recently introduced in the state legislature, which is expected to provoke a court fight and settle once and for all the right of the state to collect rentals for the diversion of water by private individuals or corporations. The bill was reported to be directed against the Niagara Falls Power Company, which, though diverting water from the Niagara river at Niagara Falls, pays no rental. The bill is expected to pass as an administration measure.

Prepared under the direction of Charles D. Breitel, counsel to the governor, the bill was introduced in the senate by Senator Benjamin F. Feinberg, of Plattsburg, and in the assembly by Assemblyman Grant F. Daniels, of Ogdensburg.

Senator William Bewley, Lockport Republican, challenged Mr. Feinberg's statement that the Niagara Falls Power Company was not paying the state for the use of the water. Mr. Bewley said that the company had been paying the state $400,000 a year for many years. This was said to indicate the possibility of some sort of a floor fight when the bill comes up for passage, but was not expected to affect its ultimate enactment.

The Power Authority of the State of New York, in its twelfth annual report, submitted February 1st to Governor Dewey and the legislature, supported the proposal of Mr. Dewey that the Niagara Falls Power Company be compelled to pay a full rental to the state for its use of water owned by the state. The power authority also recommended that the state embark upon public development and operation of its own water power resources.

This proposal would include a development of the available water power from the Niagara river on the American side to more than 1,200,000 horsepower as compared with the 500,000 horsepower, which the authority says is all that is being developed by the private corporation now. This development, if necessary, would be in competition with private corporations. Such a policy might be necessary, in the view of the authority, because of competing public developments in Canada and other parts of this country, producing low rates. And, if the state of New York does not see fit to embark upon a policy of developing its own power resources, the authority is convinced the Federal government will step in and do so.

As for the Niagara Falls Power Company's water rights in perpetuity, the authority's report said:

"The company is diverting water from this river merely because the state has permitted it to make these diversions and has not chosen to withdraw this permission, which it may do whenever the public interest so requires. Under these circumstances it would be a gross error to assume that the Niagara Falls power development must always remain in the hands of a private profit-making company merely because this company is already operating a power plant on the site. In the long run, any rentals which the state receives from the private company will be levied largely, if not entirely, against the company's customers."

The authority, in its report, further advocated state development of power because in certain areas of the state, notably in the vicinity of Buffalo, the demands upon available power reserves might become exhausted

if the Federal government decided to locate more large war industries there.

Transit Men Get Raise

AN arbitration award granting 1,200 employees of the Fifth Avenue Coach Company an 8-cent-an-hour wage increase was made by the Reverend John P. Boland, former chairman of the New York State Labor Relations Board, the Transport Workers Union announced on January 25th.

Besides granting the blanket wage increase, the award provided for the equalization of the wages paid to garage and shop mechanics and established a scale of $1.10 an hour for them, the announcement said. In individual cases these increases run from 8 to 17 cents an hour. Announcing the award, Douglas L. MacMahon, president of Local 100, characterized the city of New York as a "sweat shop" employer in comparing the new coach company scale with the wages paid employees of the rapid transit lines now operated exclusively by the city.

Transit Board Bill

GOVERNOR Thomas E. Dewey's recommendation for the abolition of the transit commission and transfer of its functions to the state public service commission was introduced in the state legislature on January 22nd in the form of a bill sponsored by Senator Frederic R. Coudert, Jr., and Assemblyman MacNeil Mitchell, Manhattan Republicans.

Governor Dewey submitted his recommendation to the legislature on January 18th in a special message, setting forth that when the unification of New York's rapid transit facilities was completed in 1940 the principal purpose for which the transit commission was created came to an end.

The sponsors of the bill pointed out that the abolition of the commission would save New York city $104,000 annually, and save the state $71,000 annually, a total of $175,000. The bill would limit to $300,000 a year the costs which the public service commission may charge the city for supervision of the safety of the transit lines.

Ohio

Service Cost Revised

IN response to a mandate of April 22, 1942, by the state supreme court, the state public utilities commission last month revised for the second time its calculations of the cost of service by the Ohio Fuel Gas Company, placing the cost at an average of 56 cents instead of 56.22 cents per thousand cubic feet.

No change in the rate paid by consumers would be made, the commission indicated.

Local Financial Aid

SEVERAL bills were offered in the state house of representatives last month to mitigate the distressed financial situation confronting local governments. One proposal which would relieve the drain upon local revenues would permit the transfer of not more than 3 per cent of the gross revenues from publicly owned utilities to the general revenue fund for current operating expenses.

Pennsylvania

Utility Granted Delay

THE Pennsylvania Superior Court on January 27th granted the Peoples Natural Gas Company a postponement of rate reductions and refunds to domestic and commercial consumers as ordered by the state public utility commission.

The company, which has its general office in Pittsburgh, and serves 13 western Pennsylvania counties, had been ordered to make refunds totaling $2,146,958 and reductions amounting to approximately $1,016,232 annually.

The court granted a petition by Peoples for a supersedeas from the commission's order of December 7, 1942. The company contended that before it obeyed the order, which applied to rates from 1939 through 1942, the case should first be given a hearing on its merits. The commission order was to take effect within sixty days from December 15, 1942.

South Carolina

Utility Action Deferred

THE state house of representatives last month denied immediate consideration of resolutions by Representative Wallace of York to establish a public utilities committee to handle measures which would expand the Santee-Cooper hydroelectric authority. No

Santee-Cooper bills had been introduced but they were expected to show up in either house or senate hoppers very soon. The resolutions were referred to the rules committee.

Tennessee

Pipe-line Hearing Opened

THE principal purpose of a proposed natural gas pipe line to extend from southern Louisiana across Tennessee will be to furnish fuel to the industrial Appalachian area, it was brought out last month at the opening of a joint hearing by the Federal Power Commission and the state railroad and public utilities commission in session at Nashville.

The Tennessee Gas & Transmission Company, Inc., is seeking authority to construct the 800-mile pipe line, the estimated cost of which is between $25,000,000 and $35,000,000. More than twenty intervenors were expected to offer testimony as to why the pipe line should not be constructed.

Robert E. May, attorney for the gas company, in his opening statement described the pipe line as a "war emergency trunk line" which would have as its primary purpose the serving of the industrial Appalachian area. He added, however, that the company would probably serve war industries along the route of the pipe line, including the Reynolds Metals Company of Lister Hill, Alabama, and phosphate and chemical plants near Mt. Pleasant and Columbia, Tennessee.

More Utility Taxes Asked

A TAX amounting to 2 per cent of the gross receipts derived by intrastate businesses operating street railway or bus systems would be imposed on such common carriers under a law proposed by the Shelby county delegation at a recent session of the state legislature.

The bill was introduced in a routine and uneventful session which fostered the introduction of a flood of local bills and a sprinkling of general legislative measures.

The tax which would be levied on street cars and busses if the law is passed would be paid directly to the city or municipality where the transportation system is operated and would apply to all companies even though incorporated under the laws of another state.

At the same time the transportation companies were on the slate for a new tax, telephone and telegraph companies were coming in for their share of proposed taxation by the Shelby delegation, which introduced a bill authorizing each municipality to impose a rental tax on telephone or telegraph poles within the city limits. The amount of the tax would be left to the discretion of the city. Mutual home telephone companies not operated for profit would be excluded.

TVA Tax Bill

SENATOR Grubb, Democrat of Hamilton, and State Finance and Taxation Commissioner George McCannless opposed each other in a senate finance, ways, and means committee meeting recently at which Grubb sponsored a bill relating to TVA taxes. It was voted out for passage.

The bill is an enabling act which would give the director of budgets and accounts of state municipalities the authority to issue warrants for the collection of funds the Tennessee Valley Authority paid to the state in lieu of taxes lost to the municipalities by taking over real estate and properties, according to Senator Grubb.

The state receives 9 per cent of the gross receipts of the TVA and McCannless argued that there was no way of drawing a dividing line as to what should go to the cities and what to the state. He pointed out that the cities involved were supposed to pay an 8 per cent tax to the state in lieu of taxes lost to it by taking over of the power distribution and that they were not doing it.

"That is an entirely different issue," Senator Grubb replied, "having nothing to do with the bill I am asking to have passed. The proper distribution of any such funds will be somebody's headache later on, but right now what we need to do is to make a law that will permit the state to make such payments to municipalities if the municipalities can show that they should be made."

McCannless then suggested that an amendment be made wherein the cities would agree to pay the 8 per cent tax. The suggestion brought words of disapproval from Senator Callicott of Davidson and Senator Buckner of Rutherford.

Texas

Litigation before Court

THE long and involved legal battle for final possession of certain valuable properties of the San Antonio Public Service Company, particularly a steam power-generating plant at New Braunfels, was before the three justices of the fourth court of civil appeals at San

Antonio last month. Attorneys for Guadalupe-Blanco River Authority and Lower Colorado River Authority, and for the board of trustees of the San Antonio Electric & Gas system, argued orally before the court of appeals against an injunction temporarily barring them from taking possession. The injunction was granted in the seventy-third district court.

It was the eleventh case in the long series of litigation which grew out of an order of the Securities and Exchange Commission directing the American Light & Traction Company to divest itself of holdings in the San Antonio Public Service Company.

Utah

Pay Plan Drafted

PROPOSAL of a 50 per cent compromise settlement of electric power bills assertedly owed by Ogden city to Utah Power & Light Company for power furnished the city from 1936 to 1941, inclusive, in excess of free power provided for the city under franchise agreement was voted last month by the Ogden city commission.

The vote, however, was divided, with Mayor Harman W. Peery voting against making the settlement as recommended by Commissioner William D. Wood, Jr., to whom it had been referred for study. Commissioner E. T. Saunders voted for Commissioner Wood's recommendation.

According to the billing from the power company, the city used power annually in excess of the amount required to be furnished the city free under the company franchise, in the following amounts: 1936, $530; 1937, $654.95; 1938, $1,647.91; 1939, $1,547.77; 1940, $1,399.81; 1941, $240.25; total, $6,020.69.

The city's compromise proposal would be submitted to George L. Ellerback, in charge of the Ogden division of Utah Power & Light Company.

Virginia

ODT Assailed

THE Office of Defense Transportation recently was charged by the Arnold-Operated Bus Line with cracking a whip over its head by holding up delivery of 20 badly needed busses until it agrees to a Sunday "turn-around" of its service at Rosslyn. The busses, ordered a year ago by the company, now are ready in Kent, Ohio, and last year the company sent out tires from its own stock to equip them for the overland trip to Arlington county, Virginia.

But ODT refuses to release them unless the company agrees to the Sunday "turn-around," which would mean that all incoming passengers would transfer at Rosslyn to Capital Transit street cars, and those outgoing would ride to Rosslyn by street car and transfer to busses there.

The turn-around at Rosslyn was first advocated last year for all Arnold busses, as a means of saving bus mileage. Later the plan was modified to operate only in nonrush hours. However, it never was put into effect, and Joseph Arnold, manager of the company, reported it was because operation on that basis was found to be impracticable.

Wisconsin

Natural Gas Problem Revived

THE problem of introducing natural gas into Wisconsin, which bedeviled the 1941 legislature, will again receive attention of the legislature because of bills recently introduced in both houses.

In the lower house, Assemblyman William F. Double and Arthur A. Lenroot, Jr., Republican of Superior, sponsored a bill which would levy a tax of 7 cents on every thousand cubic feet of natural gas used, to be collected from the consumer by the distributor and paid into the state treasury.

The treasurer would then return 15 per cent of the money collected to the state, 20 per cent to the counties, and 65 per cent to the localities. The amounts distributed to the localities would be based on the proportion of consumption.

A twin bill introduced by Assemblyman Double in the lower house, and by the committee on state and local government in the senate, would bar the introduction of natural gas into any city, town, or village unless the governing bodies voted for introduction of this gas. The bill provided that no utility may distribute natural gas unless the state public service commission finds that the use of such gas would be in the public interest.

The Latest Utility Rulings

Circuit Court Upholds SEC Integration Order

THE Second United States Circuit Court of Appeals has unanimously affirmed two orders of the Securities and Exchange Commission against the North American Company under § 11 (b) (1) of the Holding Company Act. These orders directed North American to divest itself of all securities, with minor exceptions, of subsidiaries "other than those of Union Electric Company of Missouri—its so-called St. Louis system." In a second order, which was also contested, the commission had denied the North American Company's motion for further argument on the question of whether the commission had power to designate a particular system to be retained as a "single, integrated public utility system."

The court, in an opinion by Justice Swan, upheld the SEC on every issue, which included four main points:

(1) The commission is not required by § 30 of the Holding Company Act to issue a preliminary report of its own as a prerequisite to ordering the dissolution of a system under § 11;

(2) the commission was justified in restricting North American holdings to a single system in the St. Louis area;

(3) the mere retention of a subsidiary's securities by its parent constitutes interstate commerce, constitutionally subject to Federal regulation; and

(4) section 11 does not violate the Fifth Amendment which guarantees "due process."

It might be noted on the third issue the court virtually conceded that its judgment was bound by Supreme Court decisions extending the interstate commerce theory to an extreme point. Further appeal of the North American Case to the highest tribunal is likely. *North American Co. v. Securities and Exchange Commission (No. 105).*

Utility Boards Must Hear OPA on Inflation

THE United States District Court for the District of Columbia has upheld the contentions of the Office of Price Administration to the effect that the District of Columbia Public Utilities Commission failed to pay sufficient attention or allow sufficient latitudes for its evidence on the inflationary effect of a proposed increase in rates of the Washington Gas Light Company.

The District commission had allowed the increase pursuant to the terms of the so-called Washington Plan, which provided for a profit-sharing, sliding-scale rate adjustment. The commission also took the viewpoint that the OPA should be limited to direct evidence of inflationary effect of the proposed increase and that it could not go into the merits of the Washington Plan. The court's opinion by Justice Dickinson Letts pointed out that Congress had expressly provided for OPA intervention in such cases in the Economic Stabilization Act, effective last October.

The October amendment required that the commission give the President's representative a reasonable opportunity to present his case so the commission might determine whether the formula agreed on

under the sliding-scale arrangement was inflationary, under known conditions, Justice Letts wrote.

The court said:

> The record does not show that such opportunity was afforded. Accordingly, the case is returned to the commission with direction that an inquiry be made to determine whether an application of the sliding-scale formula is inflationary in view of the changed economic and war conditions.

Justice Letts observed that the gas rate argument is not so much a question of whether the commission should enlarge or broaden the scope of its hearing under the order of March 20th, as what it should do to fix "reasonable and just" rates as required by the act of October 2nd, which seeks to prevent inflation. *James F. Byrnes et al. v. James H. Flanagan et al. (No. 17805).*

Indiana Co-op Restricted from Utility Business

RURAL Electrification Administration co-ops in Indiana are not permitted to serve the United States government or any of its departments, or any manufacturing or industrial concern. Such was the surprising import of an order handed down by the Indiana Public Service Commission authorizing the Indiana Service Corporation of Fort Wayne to serve an airfield in Allen county over the protest of the Allen-Wells County Rural Electric Membership Corporation. The commission said in part as follows:

> . . . neither the articles of incorporation nor the scope or purpose of the Rural Electric Membership Corporation Act (of Indiana) . . . permit a local rural electric membership corporation to accept [as customers] the United States government . . . To contend otherwise is to take the local rural electric membership corporations from their sphere of a mutual nonprofit association and place them in the profit-seeking public utility field, which was never intended by the act or articles of incorporation.

Re Indiana Service Corp. (No. 15864).

Price Paid to Affiliate for Gas Supply Not Limited to Cost

A DETERMINATION of the New York commission, in 35 PUR(NS) 94, that a contract for the purchase of gas by a public utility from an affiliate should be disapproved as not in the public interest has been reversed by the appellate division of the New York Supreme Court. The commission had investigated this contract pursuant to Public Service Law, § 110, subdivision 4. This law prohibits a charge, whether made pursuant to contract or otherwise, in excess of the just and reasonable charge for electricity or gas. The commission is given authority to disapprove a contract or arrangement for such a purchase if it is not in the public interest.

This statute, the court pointed out, does not differentiate or distinguish transactions with affiliates from transactions with others if the transactions be in the nature of contracts or arrangements for the purchase of gas. It provides that the public utility purchasing gas must purchase it at a just and reasonable price. The court said:

> The cost to the seller must enter into the consideration of the just and reasonable charge, but the cost to the seller is not necessarily the determinative factor. Whatever is a fair and just price to the seller is at least presumptively the fair and just price which the public utility purchaser may pay. This language calls for the consideration of factors other than cost to the seller. Competitive conditions and market prices and proper provision for the future must be taken into account. The day-to-day costs are not the only costs to be considered. The charge is to be a just and reasonable charge, taking into account all of the things which enter into, or which are likely to enter into, the business of supplying gas over a period of time.

The commission had considered the absence of a provision in the contract for

storage of gas. From a conservation standpoint it was said to be inexcusable to waste potentially valuable natural gas by using it for purposes for which a lower-grade fuel would be equally satisfactory.

The court recognized that the commission has control over the sale of natural gas under a statutory provision conferring power of curtailing or discontinuing the use for manufacturing or industrial purposes if conservation requirements require it; but it was held that the commission has no power to determine that a contract for gas is not in the public interest simply if it provides or permits, or if it results in, gas being produced by the utility being sold to an industry for industrial use. The commission, said the court, is not given unlimited authority to declare for itself the matters and things which are and which are not in the public interest.

Error was found in the disallowance of a 5 per cent engineering fee paid to an affiliate for construction of mains, where a qualified expert testified as to the fairness of the charge and there was no contradictory evidence.

A charge of 24 cents per thousand cubic feet fixed by the commission was held by the court not to be supported by the evidence. Charges in previous years had been higher and comparative payments to independent producers indicated the reasonableness of a higher charge. *Re Republic Light, Heat & Power Co., Inc. 38 NY Supp(2d) 302.*

SEC Reversed in Stock-buying Limitations

By a 4-to-3 decision, the United States Supreme Court administered a rebuff to the Securities and Exchange Commission in a case involving officers and directors of the Federal Water Service Corporation. Because officers and directors had purchased preferred stock in a company during its reorganization period, they were not permitted by the SEC to exchange such holdings for shares of the reorganized company along with other holders of similar securities.

It was admitted that no fraud was involved. The Supreme Court majority, through Justice Frankfurter, pointed out that the SEC had not determined any standards of ethics covering such a situation.

In the absence of fraud, therefore, the court held the officers were not barred from making a valid investment on their own behalf. The opinion implied that the SEC might validly set up definite standards of conduct covering such situations in the future. Justices Black, Reed, and Murphy dissented. *Federal Water Service Corp. v. Securities and Exchange Commission.*

Commission Lacks Jurisdiction over Acquisition from Foreign Corporation

A petition by an Indiana public utility for authority to purchase the outstanding capital stock of an Ohio corporation was dismissed by the Indiana commission for lack of jurisdiction. The foreign corporation operates an electric utility service in Ohio but does not own any property or facilities or conduct any operations in Indiana. Therefore, the commission concluded, it is not a public utility within the definition of that term as defined and used in the Indiana statute relating to commission approval of property acquisition.

Early Indiana statutes relating to property acquisition from companies operating in the same or "any other municipality" had been amended by adding the words, "of the state of Indiana." The commission observed that had the legislature intended that an Indiana public utility must obtain authority from the

commission in seeking to acquire property, stocks, or bonds of a corporation engaged in the same or a similar business outside the state, the applicable statutes, when amended, would have so provided.

As a general proposition, the commission concluded, its position is that it cannot assume jurisdiction of a subject matter wherein jurisdiction has not been specifically conferred upon it by statute. *Re Public Service Company of Indiana, Inc. (No. 15847).*

Capture by Enemy Not a Bar to Order To Dispose of Subsidiary

If the Japanese do not dispose of properties in the Philippine Islands constituting a part of the Associated Gas & Electric system, the trustees of Associated Gas & Electric Corporation will have to dispose of them in compliance with § 11(b)(1) of the Holding Company Act. The Securities and Exchange Commission has refused to modify an order requiring divestment of nonretainable properties by striking from the list the Manila Electric Company, Escudero Service Company, and Associated Utilities Investing Corporation.

Following the declaration of war on December 8, 1941, between the United States and the Japanese empire, enemy forces captured the Philippine Islands and, said the commission, presumably seized physical possession of the properties of these companies. It was suggested to the commission that it would be impossible for the holding company to dispose of its interests in these companies within the time allotted by § 11(c) of the act. It was contended that the order for divestment should not cover these properties since it was the intention of Congress that the period of compliance under that section should run only while it is possible, as a practical matter, to take effective steps to accomplish disposition.

The commission referred to its ruling in *Re* North American Co. (1942) 43 PUR(NS) 257, that difficulties of disposition have no bearing at all on whether any particular interest is retainable, and that such difficulties are pertinent only to the question when complying with an order of divestment should be enforced. The commission concluded:

> Obviously the trustees, under present circumstances, cannot dispose of their interests in the Philippine properties on a proper basis. We have no hesitancy in saying that should these same or similar facts obtain at the expiration of the one-year period, we would grant an extension under § 11(c) of the act so far as the Philippine properties are concerned. Further, if at the expiration of the additional period, the same or similar facts continue to obtain, the commission would not apply to a court for enforcement of its order.

Re Driscoll et al., as Trustees of Associated Gas & Electric Corp. (File No. 59-32, Release No. 4024).

Order to Facilitate Establishment of Exchange Area Boundaries

An order issued by the Wisconsin commission permitting the filing of statements and accompanying maps to designate the territory within a town in which a telephone utility proposes in the future to make extensions is intended to obviate some of the difficulties arising under § 196.50(2), Wisconsin Statutes. This law prohibits telephone extensions in occupied territory without 20-day notice or contrary to a declaration by the commission, within a 20-day period, that public convenience and necessity do not require the extension. Compliance with the literal requirements of this statute, the commission said, had been practically impossible. The time specified for commission action as prescribed pre-

cludes the possibility of a hearing.

Ruling that the statute should not be so construed as to prevent a telephone utility from serving a notice of its purpose or proposal to make future as well as immediate extensions, the commission deemed it proper for any such utility to file with the commission statements, accompanied by maps, showing the territory in towns in which such utility proposes, in accordance with its effective rules, to make extensions. Such statement if filed, or notice of its contents, should be served upon all other telephone utilities operating in the town.

The commission declared that it knew of no provision of law which prevented the various telephone utilities in a town from agreeing as to territorial limitations; nor did the commission think the law prevented all of the utilities entering into agreements whereby each files a statement and a map designating portions of the town to be served. The commission said, however:

> . . . we do not consider that the mere filing of such statements with respect to any particular town, and proof of service thereof upon all other utilities operating in that town, would alone be sufficient to justify the commission in considering that the duty imposed upon it by § 196.50(2), Statutes, could be performed by merely accepting such statements and maps for filing. The commission obviously cannot delegate the duty thus imposed to anyone—much less the utilities whose regulation is vested in the commission. No agreement among the utilities can operate to divest the commission of its statutory duties with respect to any of them. Consequently, the commission would still have the duty and reserves the right, notwithstanding any agreement between the telephone utilities operating in a particular town, to ascertain whether the proposals to extend lines and services of such utilities in that town was "not required by public convenience and necessity."

No necessity was perceived for requiring every telephone utility to file such a statement and map. Although it deemed that utilities were competent to make territorial agreements for themselves, the commission disclaimed power to make them agree. *Re Wisconsin State Telephone Association (2-U-1840).*

FPC Denies Authority to Abandon Natural Gas Service

APPLICATIONS by Godfrey L. Cabot, Inc., and Cabot Gas Corporation, its New York subsidiary, pursuant to § 7(b) of the Natural Gas Act, for permission to abandon certain pipe-line facilities and to discontinue the services rendered by means thereof to communities and industries in western New York, have been denied by the Federal Power Commission. If these applications had been granted, said the commission, certain industries, of which several are engaged in war production, numerous towns and villages, including at least several hundred homes and a number of schools and public buildings heated by gas, might on short notice be deprived of essential services which the applicants had undertaken to render and for which the public had properly relied upon the company.

In such a case, the commission continued, at the beginning of winter and with war-time scarcities and limitations obtaining, it is proper that the applicants be held to convincing proof of the specific conditions of § 7(b); namely, that their available supply of natural gas "is depleted to the extent that continuance of service is unwarranted" and that "present or future public convenience or necessity permits such abandonment." The commission failed to make such a finding.

The evidence showed, according to the commission, that the applicants continued to put their own profits and interest ahead of those of their consumers. Specific proof of this was found in the reduction of storage and in continued service to certain industries and utilities which the record indicated might properly have been curtailed or discontinued. It was an established fact, however, that

the supply of gas in the producing area was rapidly reaching a point of complete exhaustion. It appeared necessary to require the companies to continue to supply these consumers through the current winter season to the very limit of their capacity to purchase or produce, although it was said that if steps are not taken by all concerned there will come a time in the not far distant future when natural gas will no longer be available. The commission said in part:

> Considerations of public convenience and necessity clearly entitle those communities and industries which have enjoyed service from Cabot Gas Corporation to a reasonable period for readjustment, enabling them in an orderly way to substitute other fuels or other services. The industries engaged in war production, now attached to the Cabot system, should not be cut off on insufficient notice in order to make the Cabot pipe line available for other war industries elsewhere. Meanwhile, there must be no discrimination or unreasonable or unlawful preference to any customer by reason of any supposed right presumed to arise out of contract or otherwise; nor should gas be delivered to utilities or industries whose rights should be subordinated to those of older customers.

Re Godfrey L. Cabot, Inc. et al. (Opinion No. 86, Docket Nos. G-407, G-406).

Depreciation Rates for Electric And Gas Plants

THE Wisconsin commission, on application by a gas and electric utility for revised certification of depreciation rates, established the following rates for the electric plant: boiler plant equipment, 3.33 per cent; turbogenerator units, 3.23 per cent; transmission poles and fixtures, 3.22 per cent; distribution station equipment, 3.46 per cent; distribution poles, towers, and fixtures, 3.75 per cent; distribution line transformers, 3.33 per cent; meters, 3.33 per cent.

The following rates were established for depreciation of gas plant: mains, 1.67 per cent; services, 2.78 per cent; meters, 2 per cent. *Re Wisconsin Public Service Corp. (2-U-1871).*

Other Important Rulings

THE supreme court of appeals of West Virginia held that where a lessor of a certificate of convenience and necessity undertakes to terminate a lease agreement, pursuant to the terms thereof, and seeks consent of the public service commission so to do, and the record shows that the lessor is competent and willing to render satisfactory public service under such certificate, an order of the commission which grants its consent to terminate but gives to the lessee the right to operate, independently of the lease, as lessor's competitor over a part of the route covered thereby, is erroneous and should be reversed. *Reynolds Transportation Co. v. Public Service Commission et al. 23 SE(2d) 53.*

The South Dakota commission has held that a motor carrier operating under an interstate permit may not transport goods intrastate without proper authority even though he carries such goods outside and back into the state for delivery at the point of destination, since such routing constitutes an attempt to evade state regulation through a disguise of interstate commerce. *Re Interstate Carriers (Order F-2045).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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TITLES

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UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Leon Henderson, Price Administrator, Office of Price Administration

v.

Washington, Marlboro & Annapolis Motor Lines, Incorporated

[No. 8400.]

(— App DC —, — F(2d) —.)

Rates, § 649 — Notice of increase — Federal price control — What constitutes general increase.

1. A rate increase by a motor carrier is a "general increase," within the meaning of the provision of the Emergency Price Control Act of 1942 requiring notice to the President or his designated agency, when approximately 17.8 per cent of the passengers carried by busses daily over several routes and approximately 30 per cent of the passengers carried on busses daily on the route for which the increase is prescribed are affected by the rate increase, p. 195.

Rates, § 649 — Notice of increase — Federal price control — What constitutes general increase.

2. The contemporaneous administrative construction of the words "general increase" in the Emergency Price Control Act of 1942 (relating to notice of any general increase in rates) making the definition rest upon a distinction between an increase which is applicable to a class of passengers, shippers, or customers and one which is applicable to a particular customer or transportation service under special arrangement, is a reasonable one and one which expresses the intention of the act as amended by the act of October 2, 1942, p. 195.

Rates, § 240 — Tariffs — Effect of filing — Date of rate change.

3. An increase in rates is not made at the time of filing a tariff with the Interstate Commerce Commission pursuant to § 217(c) of the Interstate Commerce Act, 49 USCA § 317(c), which provides that no change shall be made in any rate specified in any effective tariff except after thirty days' notice of the proposed change and that the notice shall state the change proposed to be made and the time when such change will take effect, p. 196.

Statutes, § 24 — Superseding earlier act — Emergency Price Control Act — Interstate Commerce Act.

4. The act of October 2, 1942, amending the Emergency Price Control Act of 1942 to require notice to the President, or a designated agency, and

consent to intervention when a rate increase is proposed, having been enacted subsequent to the Interstate Commerce Act, supersedes that act to whatever extent may be necessary to achieve its own purposes, p. 196.

Rates, § 234 — Schedules — Effect of price control act.

5. The act of October 2, 1942, amending the Emergency Price Control Act of 1942 so as to prohibit a common carrier from making any general increase in rates which were in effect on September 15, 1942, unless notice is given to the President, or a designated agency, and consent is given to timely intervention, adds a further requirement to § 217(c) of the Interstate Commerce Act, 49 USCA § 317(c), and to that extent it holds in abeyance the going into effect of any proposed general increase over the levels existing on September 15, 1942, p. 196.

Rates, § 649 — Notice of increase — Price control act — Tariffs filed prior to enactment.

6. The Emergency Price Control Act of 1942, as amended by the act of October 2, 1942, to prohibit a general increase in rates or charges which were in effect on September 15, 1942, without notice to the President, or a designated agency, and consent to intervention, applies to an increase in rates by a common carrier to be effected by tariffs filed on September 23, 1942, with the Interstate Commerce Commission, which under the provisions of the Interstate Commerce Act would go into effect thirty days thereafter, and the charging of the increased rates without complying with the price control act is unlawful, p. 196.

[December 4, 1942.]

APPEAL *from judgment dismissing complaint by Price Administrator to restrain charging of rates increased by filed tariffs without complying with Emergency Price Control Act; reversed.*

APPEARANCES: Harry W. Jones, of the Bar of the state of Missouri, pro hac vice, by special leave of court, for appellant; Harry L. Shniderman entered an appearance for appellant; James P. Donovan, for appellee.

Before Miller, Vinson, and Edgerton, Associate Justices.

MILLER, A. J.: The act of October 2, 1942, amending the Emergency Price Control Act of 1942, provides: ". . . That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase."[1] By Executive Order No. 9250, issued October 3, 1942,[2] the President, pursuant to the authority granted by the act amending the Emergency Price Control Act, delegated to the Director of Economic Stabilization all the powers and authority, as described, given to the President by the act. By Directive No. 1, issued October 14, 1942,[3] the Direc-

[1] Pub. L. No. 729, 77th Cong. 2nd Sess.
[2] 7 Fed Reg. 7871.
[3] 7 Fed Reg. 8758.

tor of Economic Stabilization, acting under the authority of Executive Order No. 9250, delegated to appellant, the Administrator of the Office of Price Administration, all the powers and authority granted by the quoted provision of the act.

Appellee is a common carrier. On September 23, 1942, it filed with the Interstate Commerce Commission tariffs to increase from 10 cents to 15 cents the interstate rate of fare on its passenger bus line between Seat Pleasant, Maryland, and points within the District of Columbia. No modification, change or suspension of these tariffs was made by the Commission. At 12:01 A. M., October 25, 1942, without giving notice to the President, to the Director of Economic Stabilization, or to appellant, appellee increased its rates. On November 3, 1942, appellant filed his complaint in the district court for an injunction to restrain appellee from making any charges for transportation services rendered by it in excess of such charges as had been made for such transportation services as of September 15, 1942, until such time as appellee had complied with the requirements of the act of October 2, 1942. The district court dismissed the complaint and this appeal followed.

[1, 2] We agree with the conclusion of the district court that the rate increase made by appellee was a *general increase* within the meaning of the act of October 2, 1942. Appellee's busses carry approximately 13,000 passengers daily over its several routes. Of these, approximately 2,300 passengers daily, or 17.8 per cent of the total, are affected by the increased rates. Its busses, which operate on the route between Seat Pleasant, Maryland, and the District of Columbia, carry approximately 7,700 passengers daily, of which approximately 2,300, or 30 per cent, are affected by the rate increase. The term *general increase* has no well-defined meaning in the law of carriers or of public utilities. It does not appear in the Interstate Commerce Act and, while it has been used in decisions of the Commission, the references have been casual rather than definitional. However, increases have been described as general when, for example, they affected 15 per cent of the total tonnage and 30 per cent of the total freight revenues of the area;[4] when they affected rates on a particular class of commodities,[5] or on particular commodities in a particular area.[6] The

[4] Eastern Case, 20 Inters Com Rep 243, 247: "It is estimated that the advances affect about 15 per cent of the total tonnage of this territory and about 30 per cent of the total freight revenues, but if reference be had to the articles affected, it will be found that almost everything, with the exception of a few of the heavier and coarser articles, is by this advance subjected to an increased transportation charge. It may be properly said, therefore, that these proposed tariffs work a *general advance* in freight rates within the limits to which they apply, and such was the professed intention of the carriers in filing them." [Italics supplied.]

[5] Re Boots and Shoes from New York Points (1924) 91 Inters Com Rep 591, 597: "However, under the circumstances, it is our opinion that the discrimination complained of should have been, and should now be, removed by respondents first establishing commodity rates to Baltimore, and then if at a later date they desire to again file schedules asking for a *general increase* in their boot and shoe rates, when the New England lines file their schedules proposing the increases hereinbefore referred to, the same could be considered on a more comprehensive record than that now before us." [Italics supplied.]

[6] Re Grain and Grain Products (1927) 122 Inters Com Rep 235, 264: "When, therefore, the carriers in an investigation and suspension proceeding propose what in substance amounts to a *general increase* in rates over

contemporaneous administrative construction of the words by the Price Administrator [7] makes the definition rest upon a distinction between an increase which is applicable to a class of passengers, shippers, or customers, and one which is applicable to a particular customer or transportation service under special arrangement.[8] While this construction is not controlling, it is, we think, a reasonable one and one which expresses the intention of the act of October 2, 1942. The same distinction has been frequently drawn for the purpose of determining whether a particular law is sufficiently general to avoid attack upon the ground of unconstitutionality.[9]

[3–6] The second issue of law presented on this appeal is whether the provisions of the act of October 2, 1942, apply to an increase in rates by a common carrier which had filed a schedule of tariffs with the Interstate Commerce Commission nine days prior to approval of the act, but which rates had not been put into operation because the 30-day waiting period, prescribed by the Interstate Commerce Act,[10] had not yet elapsed. The answer depends upon the meaning of the following words: ". . . no common carrier . . . shall make any general increase in its rates or charges which were in effect on September 15, 1942, . . ." It is not disputed that on September 15, 1942, the 10-cent fare was in effect. It is not contended that the 15-cent fare was collectible from passengers before October 25, 1942. But appellee does contend that the increase was made on September 23, 1942, when it filed its tariffs.

Section 217(c) of the Interstate Commerce Act,[11] upon which appellee

a large area on agricultural commodities which have been shown to be affected by depression, they must clearly demonstrate that such increase is justified under the law including the provisions of the resolution. . . . But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service, in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less valuable." [Italics supplied.]

[7] Procedural Regulation No. 11, Notice of Increases in Rates and Charges of Common Carriers and other Public Utilities, issued November 12, 1942, 7 Fed. Reg. 9390: "§ 1300.901 *Definition.* For the purpose of this Procedural Regulation No. 11, a general increase in the rates or charges of a common carrier or other public utility is defined as any change in its rates, fares, classifications, rules, regulations, or practices which results in an increase in the charges for transportation or other public utility service applicable to a class of passengers, shippers or customers, including increases in wholesale or industrial rates or charges for public utility services, as distinguished from an increase of rates or charges applicable to a particular customer or transportation service under special arrangement."

[8] See Steele-Smith Dry Goods Co. v. Birmingham R. Light & P. Co. (1916) 15 Ala App 271, 73 So 215.

[9] Harwood v. Wentworth (1896) 162 US 547, 563, 40 L ed 1069, 16 S Ct 890; Peirce v. Van Dusen (1897) 78 Fed 693, 704 (Harlan, Taft and Lurton); Tullis v. Lake Erie & W. R. Co. (1899) 175 US 348, 351, 44 L ed 192, 20 S Ct 136. In Re Pittsburg (1907) 217 Pa 277, 231, 66 Atl 348, 350, aff'g sub nom, Hunter v. Pittsburgh (1907) 207 US 161, 52 L ed 151, 28 S Ct 40; People v. Chicago (1932) 349 Ill 304, 323, 182 NE 419, 430: "An act is general, not because it operates in every place or upon every person in the state, but because every place or person brought within the relations or circumstances provided for is affected by the law. An act is not local or special merely because it operates in but one place or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification. A law may be general notwithstanding the fact that it may operate in only a single place where the condition necessary to its operation exists." See West Coast Hotel Co. v. Parrish (1937) 300 US 379, 400, 81 L ed 703, 57 S Ct 578, 108 ALR 1330.

[10] § 217(c), 49 USCA § 317(c).

[11] 49 USCA § 317(c).

relies, does not require such a conclusion. Its language, instead, suggests just the contrary. It provides that: "*No change shall be made* in any rate . . . specified in any effective tariff . . . *except after* thirty days' notice of the *proposed change*. . . . Such notice shall plainly state the change *proposed to be made* and *the time when such change will take effect.*" [Italics supplied.] Neither does the conclusion follow from the fact that under ordinary circumstances, prior to the enactment of the act of October 2, 1942, nothing further was required of the carrier to effectuate the increase than to file its tariff and wait for the lapse of thirty days. Even under those circumstances the going into effect of the proposed change was not necessarily automatic. Section 216(g) of the act [12] authorizes the Commission, upon complaint of any interested party or upon its own initiative to hold a hearing concerning the lawfulness of the proposed new rate of fare; for this purpose it has power to suspend the operation of the new schedule for a period of seven months; and after the hearing it may, pursuant to the provisions of § 216 (e),[13] prescribe the lawful rate or fare. In view of these statutory provisions it is obvious that appellee's contention —that certain orders and regulations of the Commission compel the conclusion that the proposed rate increase was *made* on September 23, 1942—is without merit.

But, apart from all statutes existing prior to October 2, 1942, and all orders, rules, and regulations made pursuant to those statutes, the act of October 2, 1942, is conclusive of the issue presented for our decision. As it was enacted subsequent to the Interstate Commerce Act it supersedes that act, to whatever extent may be necessary to achieve its own purposes. Its clearly expressed purpose was to stabilize prices, wages, and salaries, affecting the cost of living, upon the basis of the levels which existed on September 15, 1942. To this end the President was authorized to issue a general order. To this end, also, a further express provision was added, prohibiting a common carrier from making any general increase in its rates which were in effect on September 15, 1942, unless it shall first give thirty days' notice to the President, or his designated agent, and consent to timely intervention before the Federal, state, or municipal authority which has jurisdiction to consider such an increase. This imposes no undue hardship upon the carrier. But the new act does plainly require the giving of such notice and permits timely intervention by the Price Administrator before the Interstate Commerce Commission, followed by such appropriate showing as he may wish to make. To that extent it adds a further requirement to § 217(c) of the Interstate Commerce Act; and to that extent, it holds in abeyance the going into effect of any proposed general increase over the levels existing on September 15, 1942. Congress made no exception in the act, in favor of carriers who had filed schedules prior to October 2, 1942, but had not put them into actual effect before September 15, 1942. We see no possible reason for writing such an exception into the act by way of interpretation. Every con-

[12] 49 USCA § 316(g).
[13] 49 USCA § 316(e).

sideration which concerns the effective prosecution of the war, and the stabilization of the cost of living,[14] argues to the contrary.

We conclude, therefore, that appellee failed to comply with the requirements of the act of October 2, 1942; consequently, that the increased rates which it is now charging are unlawful. The district court should therefore set aside its judgment and grant the relief prayed for in appellant's complaint.

Reversed.

[14] Pub. L. No. 729, 77th Cong. 2nd Sess.: "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* that in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942."

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Hartford Electric Light Company

v.

Federal Power Commission

[No. 42.]

(— F(2d) —.)

Electricity, § 1 — Sale at wholesale — What constitutes — Power exchange arrangement.

1. An electric generating company selling energy to a member of a power exchange makes sales at wholesale, as that term is defined by § 201(d) of the Federal Power Act, 16 USA § 824(d), when exchange arrangements result in resale, p. 204.

Interstate commerce, § 22 — What constitutes — Wholesale sale of electricity — Knowledge of destination — Voltage change.

2. A generating company selling electricity with knowledge that part of the energy will be transmitted across the state line for resale is engaged in the sale of electric energy at wholesale in interstate commerce, within the meaning of § 201 of the Federal Power Act, 16 USCA § 824, although such sale is indirect in that electricity is sold within the state to another company for transmission and sale outside the state, quantities of energy sold are variable or small, sales are made at the generating company's place of business, the generating company sells without prior obligation to do so, and in the course of transmission the energy passes through transformers of the other company where the voltage is changed, p. 204.

Interstate commerce, § 34.1 — Scope of Federal Power Act — Facilities for interstate wholesale sales.

3. A generating company's corporate organization, contracts, accounts,

memoranda, papers, and other records, in so far as they are utilized in connection with sales of electric energy to another company for resale in interstate commerce, are "facilities" over which the Federal Power Commission has jurisdiction, pursuant to § 201(b) of the Federal Power Act, 16 USCA § 824(b), apart from facilities for transmission, p. 207.

Interstate commerce, § 34.1 — Scope of Federal Power Act — Generating facilities — Aid to interstate sales.

4. Generation facilities, where used as aids to sales of electric energy to a company which resells such energy in interstate commerce, are within the jurisdiction of the Federal Power Commission under § 201(b) of the Federal Power Act, 16 USCA § 824(b), p. 208.

Statutes, § 11 — Interpretation — Legislative purpose.

5. The court, in ascertaining the legislative purpose of the Federal Power Act, must read the legislation in the light of the views of Congress at the time of its enactment, p. 211.

Accounting, § 3 — Jurisdiction of Federal Commission — Effect of state regulation.

6. The Federal Power Commission is not denied jurisdiction over the accounts and records of a generating company selling electricity for resale in interstate commerce because of the closing words of § 201(a) of the Federal Power Act, 16 USCA § 824(a), although a state Commission regulates in part the company's facilities; such a company under § 301(a) of the act, 16 USCA § 825(a), may be required to keep its accounts in two distinct forms, one pursuant to the orders of the Federal Commission, and the other in accord with state requirements, p. 211.

Interstate commerce, § 34.1 — Scope of Federal Power Act — Effect of preamble.

7. Congress did not intend by the preamble to the Federal Power Act that interstate transactions held to be beyond the regulatory power of the states should be exempt from Federal regulation because they are carried on by facilities which are also used for intrastate commerce, p. 211.

Interstate commerce, § 34.1 — Scope of Federal Power Act.

8. A company generating electricity and reselling it to another company for resale in interstate commerce is not exempt from jurisdiction of the Federal Power Commission on the ground that the preamble to the Federal Power Act refers, conjunctively, to the business of transmitting and selling electric energy and that the application of § 201(b) of the act, 16 USCA § 824(b), is restricted to a person in the joint business of transmitting and selling in interstate commerce, p. 211.

Procedure, § 30 — Findings — Necessity — As to uncontested facts.

9. The Commission is not under a duty to make further findings of uncontested facts related to "legal criteria rejected" when the record does not show that the findings of fact made by the Commission necessary to support its order are not based on substantial evidence, p. 214.

Appeal and review, § 78 — Record — Trial examiner's report.

10. A trial examiner's report to the Securities and Exchange Commission need not be included in the record before an appellate court reviewing the Commission order when no such report was served on the party seeking review and such party based no arguments on the contents of such a report either before the court or before the Commission, and so far as ap-

pears the Commission did not, and was not required to, rely upon any such report, p. 214.

(L. HAND, C. J., concurs.)

[November 25, 1942.]

PETITION *for review of order of Federal Power Commission directing compliance with accounting requirements; order affirmed. For Commission opinions, see (1941) 37 PUR(NS) 193 and (1941) 44 PUR(NS) 515.*

APPEARANCES: E. Barrett Prettyman (Austin D. Barney and Hewes, Prettyman, Awalt & Smiddy, of Counsel), for petitioner; Howard E. Wahrenbrock (Charles V. Shannon, Howell Purdue, of Counsel), for Respondent.[1]

Before: L. Hand, Clark, and Frank, Circuit Judges.

FRANK, C. J.: 1. The Commission, on June 16, 1936, made its Order No. 42, adopting a Uniform System of Accounts for Public Utilities and Licensees, subject to the provisions of the Federal Power Act. By order dated May 11, 1937, the Commission directed all public utilities subject to its jurisdiction under that act to submit certain data, statements and information concerning their accounts, records, and properties. After notice and hearing, as required by the act, the Commission, by orders dated February 25, 1941, and October 21, 1941, purporting to be entered pursuant to §§ 208 and 301(a) of the statute, 16 USCA §§ 824g, 825(a), directed petitioner, Hartford, to comply with Order No. 42 and the order of May 11, 1937. Petitioner asks this court to review and set aside the orders of February 25, 1941, 37 PUR(NS) 193, and October 21, 1941, 44 PUR (NS) 515, on the ground that, under the act, petitioner is not subject to the Commission's jurisdiction in any respect.[2]

It is clear, and petitioner so concedes, that, if petitioner is a "public utility," as that term is defined in § 201(e), 16 USCA § 824(e), then those orders are valid.[3] For § 208, found in Part II of the act, and § 301 (a), found in Part III, each applies to "every public utility."[4] And § 201(e),

[1] John E. Benton and Frank B. Warren filed a brief on behalf of The National Association of Railroad and Public Utilities Commissioners, as amicus curiae.

The oral arguments and the briefs filed by the parties and amicus curiae were excellent and exceedingly helpful to the court.

[2] No question is raised as to the constitutionality of the act.

[3] Jersey Central Power & Light Co. v. Federal Power Commission (1942) 129 F (2d) 183, 45 PUR(NS) 110, similarly approaches the question of the Commission's jurisdiction through a determination of whether a company is a "public utility" under § 201(f).

[4] Section 208 reads: "(a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property. (b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction."

Section 301(a) reads: "Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this act, including accounts, records, and memoranda of

found in Part II, reads: "The term 'public utility' when used in this part or in the part next following means any person[5] who owns or operates facilities subject to the jurisdiction of the Commission under this part."

The pivotal question is, then, whether petitioner owns or operates any facilities subject to the Commission's jurisdiction under Part II.[6] For answer to that question, we must turn to § 201(b), contained in Part II, which reads as follows: "The provisions of this part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy, or deprive a state or state Commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a state line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this part and the part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter."

2. The facts pertinent to this review may be summarized as follows:

Petitioner is a Connecticut corporation engaged in the business of generating, transmitting, distributing, and selling electric energy in and near Hartford, Connecticut. It owns a steam-generating plant in Hartford. For some ten years before the President approved the act, petitioner was a member of a voluntary arrangement for a "pool" of electric energy known as the Connecticut Valley Power Exchange. The Exchange consisted of Massachusetts and Connecticut electric utility companies and was formed and operated for the purpose of exchanging electric energy, "at incremental cost," between the members. Through the operations of this Exchange, electric energy generated by petitioner was transmitted to, and sold to, customers in Massachusetts. Among the facilities used by petitioner in these transmissions of energy through the Exchange were these: (a) Facilities, owned by petitioner, between the connections on its generators in its generating plant and a substation immediately outside its generating plant. (b) That substation, owned by petitioner. (c) A

the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any state. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof."

[5] Section 3 defines "person" as used in the act to mean "an individual or corporation."

[6] Part II includes §§ 201 to 209 inclusive; Part III includes §§ 301 to 319.

transmission line, owned and operated by the Connecticut Power Company, connecting the substation with the facilities of a Massachusetts member of the Exchange.

In 1936, petitioner withdrew from the Exchange, Connecticut Power then succeeded it as a member of the Exchange, and petitioner then sold to Connecticut Power the facilities from its bushings on the wall of its generating plant to, and including, the substation. Since then Connecticut has owned and operated these facilities. Petitioner retained ownership and operation of the facilities in its generating plant, and between its generators and those wall bushings. The generators are connected to a "Main Bus" inside the generating plant. Numerous circuits connected to that bus are used solely in intrastate distribution and transmission; but there are three such circuits which lead through the wall bushings of the plant building to the substation; inside the building these circuits to the wall bushings are owned by petitioner, while outside they are now owned by Connecticut Power.

The 1936 sale of assets to Connecticut Power was admittedly made in the hope of escaping the Commission's jurisdiction. After that sale to Connecticut Power, no physical change was made in the transfers of energy under the Exchange arrangement, and the physical plan of operations of the Exchange continued as theretofore. Connecticut Power supplies to other Exchange members energy which it receives principally from petitioner, and receives from them energy, a considerable part of which it supplies to petitioner. Financial benefits, by way of savings, which had formerly accrued to petitioner as a member of the Exchange, now are received and retained by Connecticut Power. It is admitted by petitioner, that it knows that the amount of energy it sells to Connecticut Power exceeds the latter's load requirements for its needs in the state of Connecticut; that such excess is utilized by Connecticut in connection with the operations of the Exchange; that, in such operation, energy is transmitted across the state boundary to Massachusetts, where it is used (except for losses) for supplying ultimate consumers; and that the supply of energy by petitioner is essential to the operations of the Exchange.[7]

[7] Petitioner's president testified as follows: "It is a fact known to the company that the amount of energy sold by the company to The Connecticut Power Company exceeds the territorial requirements of the latter, and that such excess is used by it, that is, by The Connecticut Power Company, in connection with the operation of the Connecticut Valley Power Exchange; and that in such operation energy is transmitted across the Massachusetts line; . . . The company is the source of all the steam generated energy that The Connecticut Power Company delivers to the Connecticut Valley Power Exchange for transfer to Massachusetts and New York. Practically all of the energy received by The Connecticut Power Company from the Connecticut Valley Power Exchange originates in Massachusetts. . . . "

Q. Why do you permit The Connecticut Power Company, when convenient, to purchase the surplus electrical energy from the Hartford Company which you know it transmits across the state lines, as you have testified?

A. Because when The Hartford Electric Light Company elected to divest itself of all interstate transactions and of any benefit therefrom, we would, if we had specified that power purchased from the Hartford Company should not be used for such purpose, have deprived the residents of the territory contiguous to the Connecticut Valley of the benefits arising from the saving of large amounts of fuel and thus have acted to vitiate an obvious benefit to the public in this territory." Petitioner's executive vice president testified: "The Hartford Electric Light Company is the

Petitioner has a contract with Connecticut Power which obligates petitioner to supply Connecticut Power the firm capacity, up to a designated limit, required by Connecticut for its sales of energy to intrastate customers in a designated area. Outside its contract commitments, petitioner also sells Connecticut Power surplus energy. Were it not for this surplus energy thus sold by petitioner to Connecticut Power, the latter could not transmit energy under the Exchange arrangement. Although in this way energy generated by petitioner is transmitted and resold in Massachusetts, petitioner never sells any designated block of energy for specific interstate use. Connecticut Power may either distribute a particular purchase to its customers or put it in the transmission line to Massachusetts. Petitioner has no interstate energy business except in so far as its sales of energy to Connecticut Power transmitted to Massachusetts may, as "a matter of law" under

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main source of energy for The Connecticut Power Company in connection with The Connecticut Power Company's exchange operations."

The following colloquies occurred in the oral argument before the Commission:

Mr. Prettyman (one of counsel for petitioner): I say that the physical movement, when we were a member of the Exchange, was the same as the physical movement since we have not been a member of the Exchange.

Commissioner Scott: Let me put it in this way. Are not the various electrical facilities used in the process purely transferring devices, and it is not a fact that the entire combined process—electric, magnetic, and mechanical—is integral, continuous, and essentially simultaneous, and in the movement or transportation of this energy the same today as prior to 1936?

Mr. Prettyman: Yes.

The Chairman: And is not the timing of deliveries of such energy as does move over into Massachusetts the same as it would have been if the Hartford Company had remained a member of the Exchange?

Mr. Prettyman: That may be so. If the Hartford Company were a member of the Exchange today probably the timing would be the same as to the energy that would go to the Exchange.

The Chairman: And it would go there for the same purpose?

Mr. Pettyman: The ultimate purpose, yes.

The Chairman: And the Hartford generating station would play the same part in the integration of power supply accomplished by the Exchange that it would have played if the Hartford Company had remained a member of the Exchange?

Mr. Prettyman: The generating station of the Hartford generates energy that goes into the Exchange today, and the same thing would be true if it were a member of the Exchange?

The Chairman: That is right.

Mr. Prettyman: That is true. . . . The purpose of the whole system from generator to point of utilization is to get energy from the generator to the point of utilization, yes. There is no question about that.

Commissioner Scott: In other words, all of these facilities are a part of a process which makes the ultimate utilization possible? But for the generation and its transfer over these other lines and its ultimate use at the other end there would be nothing for the consumer to use?

Mr. Prettyman: There is no question at all about that. If there were nothing between the generator and the point of utilization the consumer would not get anything. There is no question about that. . . .

The Chairman: Is it not true that all of the facilities involved in this transfer of energy generated in the Hartford station, and including the generating process in the Hartford station of energy that moves into Massachusetts, are used in precisely the same way, with precisely the same timing as they were used or would have been used if Hartford had remained a member of the Exchange?

Mr. Prettyman: Yes; I think the answer to that is "yes"—the physical operation, that is, the generation and transmission over the line, obliterating the difference in identification of the companies involved. But the physical aspects of the generation, et cetera, are probably the same, because the demands must be the same, that is, they are the same now as when Hartford was a member of the Exchange. . . .

Commissioner Manly: Is there a sale of electric energy at wholesale in this case?

Mr. Barney (one of counsel for petitioner): Yes.

Commissioner Manly: There is a sale by the Hartford Company to the Connecticut Power Company?

Mr. Barney: That is the sale at wholesale.

Commissioner Manly: For resale?

Mr. Barney: Oh, yes.

the act, constitute interstate transactions by petitioner.

Petitioner owns 9.19 per cent of the common stock of Connecticut Power. Four of the eleven directors of petitioner are among the fourteen dirctors of Connecticut Power, and two of the principal officers of the two companies are the same.

Through the three circuits, above mentioned, which lead from petitioner's generating plant to the substation owned by Connecticut Power, 166,144,000 kilowatt hours of electric energy from petitioner's generating plant were supplied to Connecticut Power in the first nine months of 1939, of which 97,932,000 were transmitted to Massachusetts. From June 1 to September 30, 1939, approximately a third of the net generation at petitioner's plant was sent to Massachusetts.

[1, 2] 3. Section 201(d) defines the "sale of electric energy at wholesale" to mean "a sale of electric energy to any person for resale." Petitioner sells electric energy to Connecticut Power. The Exchange arrangements result in resales, whether they be regarded as sales to the Exchange [8] and resales by the Exchange, or as sales by the Exchange as agent for the members, or as an agency whereby each member acts as agent for the others in selling the energy supplied by the others. For the inescapable fact is that energy sold by petitioner to Connecticut Power is resold to consumers in Massachusetts. There can be no doubt that petitioner is making sales at wholesale, as that term is defined in the act.

Petitioner concedes that Congress has the constitutional power to regulate the sales transactions in which it is engaged, but argues that Congress has not exercised that power in this act, because it has used the expression "in interstate commerce," a phrase, says petitioner, not sufficiently comprehensive to cover such transactions.[9] A similar contention was made in Peoples Nat. Gas Co. v. Federal Power Commission (1942) — App DC —, 44 PUR(NS) 375, 127 F(2d) 153, in which a gas company had sold natural gas in Pennsylvania to another company which immediately transported the gas to New York, where it sold it to others for resale. The court rejected the argument, stating that the words "sale in interstate commerce" aptly described such a transaction.[10] We adopt the court's excellent discussion of the pertinent authorities. See also Shafer v. Farmers Grain Co. (1925) 268 US 189, 199, 69 L ed 909, 45 S Ct 481, and Flanagan v. Federal Coal Co. (1925) 267 US 222, 225, 69 L ed 583, 45 S Ct 233 (in both of which the court used the phrase "in interstate commerce"). Cf. Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co. 273 US 83, 71 L ed 549, PUR 1927B 348, 47 S Ct 294.

We are not to be taken as saying that a mere sale by A, within a state, to B, who ships the commodity in interstate commerce, would necessarily

[8] The Exchange agreement refers to "power purchased by the Pool" from "the company furnishing the power."

[9] We shall discuss below petitioner's additional contention as to the effect of the preamble, § 201(a).

[10] The National Gas Act, 15 USCA § 717 et seq. relates not only to the "transportation of natural gas in interstate commerce," but also to "the sale in interstate commerce of natural gas for resale . . ." and to "natural gas companies engaged in such transportation or sale."

be a sale in interstate commerce; the character and extent of the seller's knowledge of the purpose of the purchaser to ship across state lines may be important. Petitioner, in support of its position that it has insufficient knowledge of the transmission to Massachusetts of the energy purchased from it by Connecticut Power, leans heavily on Superior Oil Co. v. Mississippi (1930) 280 US 390, 395, 74 L ed 504, 50 S Ct 169, a case which, as the opinion shows, turned on its peculiar facts and which, as the court said, was" near the line." [11] There in holding that the intrastate sales of gasoline did not become sales in interstate commerce, so as to relieve the seller of taxes in the state where the sale took place, merely because the

[11] In that case an oil company in Mississippi sold gasoline to shrimp packers. The gasoline was delivered at the wharves of the packers' packing plants in Mississippi and was thence carried by the packers' boats to a "neighborhood" in Louisiana and there delivered by the packers to shrimp fishermen for use in fishing. The Oil Company, in each case of delivery, received from the packers a so-called bill of lading, signed by the master of the packers' boat on which the gas was loaded, purporting to show a consignment to the packers, to the Louisiana neighborhood as destination, on that boat; the bill of lading provided that the gasoline should remain the property of the Oil Company until delivered to the consignee or its agent at such "destination," and that all risks should be upon the purchaser, the Oil Company paying no freight. The packers, when the gasoline was delivered at their plants, were free to do with it as they pleased. The court held that the sales by the Oil Company were not in interstate commerce and were, therefore, subject to be taxed by the state of Mississippi. The court said that the bills of lading seem "to have had no other use than to try to convert a domestic transaction into one of interstate commerce. There was no consignee at the point of destination . . . There was no point of destination for delivering the oil but merely a neighborhood in which the packers that had bought it and already held it expected to sell it again. The document hardly can affect the case, because it is 'not within the power of the parties by the form of their contract to convert what was exclusively a local business subject to state control, into an interstate commerce business protected by the commerce clause,' . . . at least when the contract achieves nothing else." The court went on to say: "The importance of the commerce clause to the Union of course is very great. But it also is important to prevent that clause being used to deprive the states of their life-blood by a strained interpretation of facts. We may admit that this case is near the line. There was a regular course of business known to the appellant, that took the gasoline into another state, and if by mutual agreement the oil had been put into the hands of a third person, a common carrier, for transportation to Louisiana, the mere possibility that the vendor might be able to induce the carrier to forego his rights might not have been enough to keep the transaction out of interstate commerce. A. G. Spalding & Bros. v. Edwards (1923) 262 US 66, 67 L ed 865, 43 S Ct 485, (a case of foreign export, see Sonneborn Bros. v. Cureton [1923] 262 US 506, 520, 521, 67 L ed 1095, 43 S Ct 643). But here the gasoline was in the hands of the purchaser to do with it as it liked, and there was nothing that in any way committed it to sending the oil to Louisiana except its own wishes. If it had bought bait for fishing that it intended to do itself, the purchase would not have been in interstate commerce because the fishing grounds were known by both parties to be beyond the state line. A distinction has been taken between sales made with a view to a certain result and those made simply with indifferent knowledge that the buyer contemplates that result. Louisville & N. R. Co. v. Parker, *supra;* Kalem Co. v. Harper Bros. *supra.* The only purpose of the vendor here was to escape taxation. It was not taxed in Louisiana and hoped not to be in Mississippi. The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it. Bullen v. Wisconsin (1916) 240 US 625, 630, 631, 60 L ed 830, 36 S Ct 473. But, on the other hand, the desire to make its act an act in commerce among the states was equally unimportant when it was apparent that the buyer's journey to Louisiana was accidental so far as the appellant was concerned. It is a matter of proximity and degree as to which minds will differ, but it seems to us that the connection of the seller with the steps taken by the buyer after the sale was too remote to save the seller from the tax. Dramatic circumstances, such as a great universal stream of grain from the state of purchase to a market elsewhere, may affect the legal conclusion by showing the manifest certainty of the destination and exhibiting grounds of policy that are absent here." (280 US at pp. 394–396.)

buyers transported the gasoline to another state for resale, the court, in an opinion by Holmes, J., said: "A distinction has been taken between sales made with a view to a certain result and those made simply with indifferent knowledge that the buyer contemplates that result. Louisville & N. R. Co. v. Parker (1916) 242 US 13, 14, 61 L ed 119, 37 S Ct 4; Kalem Co. v. Harper Bros. (1911) 222 US 55, 62, 56 L ed 92, 32 S Ct 20." The citation of the Kalem Case (in which the opinion was also by Holmes, J.) illuminates the meaning of "indifferent knowledge"; for, in that case, it was said that "mere indifferent supposition or knowledge on the part of the seller that the buyer of spirituous liquor in contemplating such unlawful use is not enough to connect him with the possible unlawful consequences, . . . but . . . *if the sale was made with a view to the illegal resale,* the price could not be recovered." [12]

The instant case, far more closely resembles the Kalem Case than the Superior Oil Case. For the petitioner makes its sales to Connecticut Power with no mere "indifferent knowledge" as to what Connecticut Power contemplates. Because of petitioner's former membership in the Exchange, because it has directors and officers interlocking with Connecticut Power and owns a sizable block of Connecticut Power's stock, petitioner cannot possibly lack knowledge of the fact that the sales by it to Connecticut Power are indispensable to those Exchange arrangements which culminate in the transmission to, and sale of, considerable quantities of electric energy in Massachusetts. Indeed, the record shows that petitioner openly admitted that it has such knowledge. Petitioner, therefore, is fully aware that some of such energy is unavoidably destined by the buyer for interstate use. Cf. Louisville & N. R. Co. v. Parker, *supra.*

The facts here are, then, ample to show such knowledge as is required; but we are not to be taken as saying that less facts would not be sufficient. We have not based our ruling on "affiliation" between the companies, or on the thesis that Connecticut Power is an agent of petitioner. Nor have we considered it of any importance that petitioner, in 1936, sold assets to Connecticut and took other steps to escape the Commission's jurisdiction; to make such an attempt is not unlawful, is indeed not immoral—not even if it fails.

It is immaterial that the sales are "indirect" in that they are sold within the state to another company for transmission and sale outside the state, or that the quantities of energy sold are variable or small (relative to the seller's total output) or are part of petitioner's "surplus" production; [13] or that the sales are made at petitioner's place of business; [14] or that petitioner sells without prior obligation to do so.[15] Nor is it of significance that the energy, in the course of transmission,

[12] *Emphasis* added.

[13] See Peoples Nat. Gas Co. v. Federal Power Commission, *supra;* Jersey Central Power & Light Co. v. Federal Power Commission, *supra,* note 3.

[14] Flanagan v. Federal Coal Co. *supra;* Pennsylvania R. Co. v. Clark Bros. Coal Min. Co. (1915) 238 US 456, 465, 59 L ed 1406, 35 S Ct 896; Peoples Nat. Gas Co. v. Federal Power Commission, *supra.*

[15] Western U. Teleg. Co. v. Foster, 247 US 105, 113, 62 L ed 1006, PUR1918D 865, 38 S Ct 438, 1 ALR 1278.

passes through Connecticut Power Company's transformers where the voltage is changed; the nature of electric energy and of its transmission is such that we regard as inapposite cases (like Arkadelphia Mill. Co. v. St. Louis, S. W. R. Co. 249 US 134, 151, 152, 63 L ed 517, PUR1919C 710, 39 S Ct 237) where shipments are interrupted for a considerable period during which the goods are processed.[16]

We conclude that the Commission correctly held that petitioner is engaged in "the sale of electric energy at wholesale in interstate commerce."

4. Petitioner, however, contends that, even if it is engaged in interstate wholesale sales, still it is not a "public utility," and, therefore, the Commission's orders are invalid. In brief, its position is (a) that a company, although engaged in making such interstate sales, is not a "public utility," subject to the Commission's jurisdiction, unless it has facilities for "transmission in interstate commerce," and (b) that petitioner has no such facilities.

More in detail, its contention is as follows: (1) All facilities of such a company are rigidly divided into those for "transmission" and those for "generation" of electric energy. (2) Petitioner has no facilities for transmission in interstate commerce; accordingly, all its facilities used in connection with its interstate wholesale sales are "generation" facilities. (3) The Commission has no jurisdiction, under any section found in Part II, over "generation" facilities. (4) It follows that the Commission has no jurisdiction, under Part II, over any of petitioner's facilities. (5) Therefore, petitioner is not a "public utility," as that term is used in §§ 208 and 301(a) pursuant to which the Commission's orders were entered, since that term, for the purposes of those sections, is defined, in § 201(e), as a company which owns or operates facilities subject to the Commission's jurisdiction under Part II. (6) The result, says petitioner, is that the Commission's orders here under review are invalid.

[3] The essential points in this contention are the assertions (1) that in no portion of Part II is the Commission given jurisdiction over generation facilities; (2) that all facilities of such a company are either for generation or for transmission, and that petitioner has no interstate transmission facilities, and has no facilities used in connection with its interstate wholesale sales except its generation facilities. If the petitioner errs as to either of these two assertions, its entire contention falls. We hold that it does so err, for the following reasons:

Even if we assume that generation facilities are not within the Commission's jurisdiction under § 201(b) or any other portion of Part II, and also that petitioner has no facilities for interstate transmission, still petitioner's contention is untenable: Section 201 (b) confers jurisdiction over not only facilities (1) for interstate *transmission* but also—and *disjunctively*—over facilities (2) for interstate

[16] Cf. Swift & Co. v. United States (1905) 196 US 375, 398, 49 L ed 518, 25 S Ct 276; Texas & N. O. R. Co. v. Sabine Tram Co. (1913) 227 US 111, 57 L ed 442, 33 S Ct 229; Western U. Teleg. Co. v. Foster, *supra*, note 15; Mississippi River Fuel Corp. v. Federal Power Commission (1941) 121 F(2d) 159, 164, 40 PUR(NS) 213.

wholesale *sales*. If the Commission has no jurisdiction under § 201(b) over generation facilities, then that part of that section conferring jurisdiction over facilities for interstate wholesale sales becomes meaningless —unless there is a third category of facilities, i. e., those used neither for transmission nor for generation. We must, therefore, look for that third category. We find it in petitioner's corporate organization, contracts, accounts, memoranda, papers, and other records, in so far as they are utilized in connection with such sales.[17]

It should be noted that the word "facilities" is generally regarded as a widely inclusive term, embracing anything which aids or makes easier the performance of the activities involved in the business of a person or corporation. Cf. Nekoosa-Edwards Paper Co. v. Minneapolis, St. P. & S. Ste. M. R. Co. (1935) 217 Wis 426, 259 NW 618, 620; Fraters v. Keeling (1937) 20 Cal App(2d) 490, 67 P (2d) 118, 119; Funk & Wagnall's Dictionary (1913 ed.) 888.

[4] 5. A majority of the court holds that there is also the following alternative ground for rejecting petitioner's contention: Even if we assume that petitioner has no facilities for interstate transmission, and that petitioner's books, records, etc., are not facilities for wholesale sales in interstate commerce, so that petitioner has nothing except facilities for generation, still petitioner's contention is unsound. For we consider that generation facilities, where used as aids to such sales, are within the Commission's jurisdiction under § 201(b).

As previously noted, that subsection specifically provides that "the Commission shall have jurisdiction over *all* facilities" either for (1) "transmission of electric energy in interstate commerce" or (2) "the sale at wholesale of electric energy at interstate commerce." If that sentence, so providing, stopped there, it would be obvious that the Commission has jurisdiction over generation facilities when used in connection with interstate wholesale sales. The sentence, however, continues with a clause (which, for convenience, we shall call the "but" clause) reading: "but shall not have jurisdiction, except as specifically provided in this part and the part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." This "but" clause, petitioner argues, reduces the authority conferred on the Commission over "all facilities" for "the sale at wholesale in interstate commerce," in the earlier part of the sentence, by excluding "facilities used for generation." To this argument there are several answers:

(a) In the preceding subsection, § 201(a), Congress "declared" that " . . . Federal regulations of matters relating to generation to the extent provided in this part and the part next following . . . is nec-

[17] We note, in passing, that such records, etc., are described in § 301(a).

It is suggested that, if such records, etc., are facilities, they are used in the generating business so that, if the generation facilities are excluded, so must they be. But some of the records, etc., are used in connection with the sales and not the generation; that they are partly used in the generation business is not material.

essary in the public interest." The legislative history of the act also weighs heavily against petitioner's assertion. As that history is excellently summarized in Jersey Central Power & Light Co. v. Federal Power Commission (1942) 129 F(2d) 183, 45 PUR (NS) 110, we shall do no more than to quote the following from the statement of the House Conferees accompanying the Conference Report:[18] "The Senate bill in § 210(a) contained a somewhat more lengthy declaration of policy than the House Amendment, the only material difference being that the House Amendment contained no reference to 'generation' of electric energy which appeared in the Senate bill. The conference substitute follows the language of the House Amendment but inserts a clause relating to generation to the extent regulation thereof is provided in this part and the part next following. The House Amendment and Conference substitute also makes reference to the 'sale of electric energy at wholesale in interstate commerce' which reference did not appear in the Senate bill. The same general differences between the Senate bill and the House Amendment has been followed with a clarifying phrase added to remove any doubt as to the Commission's jurisdiction over the facilities used for the generation and local distribution of electric energy to the extent provided in other sections of this part and the part next following."

Moreover, among the facilities described in the "but" clause of § 201 (b), are those used "only for the transmission . . . in intrastate commerce"; as such facilities could not possibly be among those used for interstate transmission or interstate wholesale sales, the "but" clause becomes foolish if interpreted as carving out of the authority granted in the earlier part of the same sentence the facilities described in the "but" clause. Such a foolish interpretation is avoided by giving effect to a phrase in the "but" clause, i. e., "except as specifically provided in this part or the part next following." The "but" clause then shows up not as one reducing jurisdiction but as a negatively worded confirmation of the Commission's jurisdiction, in certain circumstances, over the facilities mentioned in the "but" clause. In other words, the "but" clause is to be construed as if it read: "Wherever it is so specifically provided in Parts II and III, the Commission shall have jurisdiction over the facilities used for generation, for local distribution, for interstate transmission, etc."

Under that interpretation, the Commission, under § 201(b), has jurisdiction of generation facilities when used in connection with wholesale interstate sales, because jurisdiction of facilities for such sales is "specifically provided" in that section. Congress, we think, intended to exempt generation facilities when not used for interstate purposes because, when not so used, they are intrastate facilities; accordingly, when not so used, they are grouped, in the "but" clause, with other noninterstate facilities, i. e., facilities used in local distribution or for intrastate transmission.

Regarding the "but" clause as an exception, and keeping in mind the obvious purpose of Congress, disclosed

[18] 74th Cong. 1st Sess. House Report No. 1903, page 74.

in the legislative history, to see to it that there was effective regulation of interstate wholesale sales of electrical energy, we consider as pertinent the "elementary rule requiring that exceptions from a general policy which a law embodies should be strictly construed; . . ." Spokane & I. E. R. Co. v. United States (1916) 241 US 344, 348–350, 60 L ed 1037, 36 S Ct 668; cf. Piedmont & N. R. Co. v. Interstate Commerce Commission (1932) 286 US 299, 311, 312, 76 L ed 1115, 52 S Ct 541; United States v. McElvain (1926) 272 US 633, 639, 71 L ed 451, 47 S Ct 219.

We note that the Natural Gas Act, 15 USCA § 717(b) provides that that act shall apply to the "transportation" of natural gas "in interstate commerce" or to the "sale in interstate commerce of natural gas for resale"; the same sentence contains a "but" clause reading: "but *shall not apply* . . . to the local distribution of natural gas . . . or to *the production or gathering of natural gas.*" [19] Yet, in People's Nat. Gas Co. v. Federal Power Commission (1942) — App DC —, 44 PUR(NS) 375, 127 F (2d) 153, a company engaged in production of natural gas, but not in its interstate transportation, was held to be subject to the act because, in the state of Pennsylvania, it sold gas to another company which transported the gas to another state for resale.

The point is that it is not as such that the generation facilities are subject to the Commission's jurisdiction under § 201(b), but as facilities used in the business of knowingly selling electric energy wholesale in interstate commerce. It is the fact of petitioner's knowledge which should dissipate the apprehension expressed in the brief of amicus curiae that the result of a decision sustaining the Commission in this case "will be to bring under the Commission's jurisdiction every generating company which generates any electric energy which *finds its way* into interstate commerce." We are not holding, nor did the Commission hold, that the act has "the effect of bringing all owners of generating facilities" with that jurisdiction.[20]

[19] *Emphasis* added.

[20] Because of the wording of the statute, it would seem to make little practical difference (1) whether we decide that the Commission has "jurisdiction" over petitioner's corporate organization, records, etc., so far as they are used in connection with interstate wholesale sales—leaving undecided the question whether it also has "jurisdiction" over petitioner's generation facilities because they are used in connection with such sales—or (2) whether we go further and decide (either independently or in the alternative) that it has "jurisdiction" over such generation facilities because they are so used. This is true because, once it is decided that the Commission has "jurisdiction" over any of petitioner's facilities, then the petitioner is a "public utility," and the Commission is then vested with specific powers under the several sections of the act which refer to a "public utility"; and some of those sections give the Commission specific powers —some direct and some indirect—with respect to the generating facilities of a "public utility."

Thus § 207 relates to "any public utility." It provides that, on complaint of a state Commission, if the Federal Commission finds "any interstate service" of "any public utility" inadequate, it may *"compel the enlargement"* of the *"generating facilities,"* unless to do so will impair the public utility's ability to render adequate service to its customers; and see § 202.

Also, since petitioner is a "public utility," the Commission, even if it had "jurisdiction" solely over petitioner's corporate organization, records, etc., would have authority to regulate petitioner's rates for interstate sales (§ 205); to investigate the cost of any of its properties, especially so far as that is necessary for rate making (§ 208); to order petitioner to keep its records, etc., as the Commission prescribes (§ 301); to fix rates of depreciation of petitioner's "several classes of property" (§ 302); and require petitioner to

5a. The Commission argues that there is an additional ground for holding that it has "jurisdiction" under § 201(b). Since we have held that it has "jurisdiction," for the reasons heretofore given, we shall not consider that argument but merely note that it runs as follows: In Utah Power & Light Co. v. Pfost (1932) 286 US 165, 181, 76 L ed 1038, 52 S Ct 548, the court differentiated between generation and transmission, stating that transmission "begins . . . definitely at the generator, at which point measuring appliances can be placed and the quantum of electrical energy ascertained with practical accuracy." As appears from our summary of the facts in the instant case, petitioner owns and operates facilities connecting its generators with the "bus," and circuits connected with that "bus" which lead, through bushings in the wall of petitioner's generating plant, to the substation owned by Connecticut Power Company; all those connections, the bus, and that part of the circuits inside the petitioner's generating plant, are owned by petitioner. The Commission argues that those facilities, under the Pfost Case, are transmission facilities and, as the energy sold in Masachusetts passes (with petitioner's knowledge) through those facilities, they are "facilities for the transmission of electric energy in interstate commerce," and are within the Commission's jurisdiction under § 201 (b). Petitioner argues that such facilities are classified in the Commission's accounting rules as part of a generating plant; but the Commission replies that such an accounting classification cannot be controlling when the question, as here, is one of jurisdiction. Petitioner also argues that these facilities, even if for transmission, are, relatively, so small in extent that they cannot be the basis of jurisdiction; the Commission answers that in Jersey Central Power & Light Co. v. Federal Power Commission (1942) 129 F(2d) 183, 193, 45 PUR(NS) 110, jurisdiction, under § 201(b), was held to be properly based on a transmission line which was but seven-eighths of a mile in length.

[**5–8**] 6. Petitioner, however, argues that, regardless of all other consideration, Congress cannot have intended that the Commission should have jurisdiction over any of petitioner's facilities because of the preamble of the act, § 201(a) which reads as follows: "It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this part and the part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, how-

file reports, including data as to earnings, etc., and costs of "generation" (§ 304).

It is true that were we to leave it undecided whether the Commission has any "jurisdiction" over petitioner's generating facilities, we would thereby leave it undecided whether, as to such facilities, the Commission has authority, with respect to petitioner's generating facilities, under § 203, requiring the Commission's approval of the sale, etc., of a whole or part of a public utility's facilities "subject to the jurisdiction of the Commission." And the same might be true with respect to § 206(b); cf. however, the Commission's powers over petitioner under §§ 205 and 213.

ever, to extend only to those matters which are not subject to regulation by the states."

On the basis of the closing words of that section, two arguments are advanced. The first (as we understand it) runs thus: The Connecticut Commission asserts that it, absent a Federal statute, has complete jurisdiction over all petitioner's facilities and activities; and perhaps, if the question were to arise today, the Supreme Court would hold that, absent Federal legislation, such a state Commission can constitutionally exert such jurisdiction; accordingly, the last phrase in § 201(a) should be read as depriving the Federal Commission of jurisdiction.

With that suggestion, we cannot agree. For, in ascertaining the legislative purpose, we must read the legislation in the light of the views of Congress at the time of its enactment.[21] Whatever may be the doctrine today (a matter we need not consider), it is clear, from the legislative history, that, when this act was in Congress, wholesale interstate sales were, even in the absence of Federal legislation, deemed to be beyond state regulatory powers, under Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co. 273 US 83, 71 L ed 549, PUR1927B 348, 47 S Ct 294. Yet petitioner would have us adopt an interpretation of the act which would deprive the Federal Commission of jurisdiction over the very kind of sale which, under the Attleboro Case, would then have been held not to be subject to state regulation, although one of the chief purposes of the act was to close just that regulatory gap.[22]

Petitioner also seems to argue that, because of the closing words of § 201 (a), the Federal Commission is denied jurisdiction over any facilities which are, in part, subject to regulation by any state, and that, since the state of Connecticut, through a state Commission, regulates, in part, all petitioner's facilities, Congress must be understood as intending that they should not be within the regulatory power of the Federal Commission. That suggestion is without merit. And especially so with reference to accounts, records, and the like. For Congress obviously contemplated that there would, in many cases, be both Federal and state regulation. Thus, in § 301(a), after conferring on the Federal Commission authority over such matters, Congress said: "Provided, however, that nothing in this act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any state." Thus a company like petitioner may be required to keep its accounts, etc., in two distinct forms, one pursuant to the orders of the Federal Commission and the other in accord with state requirements.[23]

[21] Cf. Great Northern R. Co. v. United States (1942) 315 US 262, 273, 86 L ed 836, 62 S Ct 529; United States v. Union P. R. Co. (1875) 91 US 72, 79, 23 L ed 224; Ingo v. Koch (1942) 127 F(2d) 667.

[22] Cf. Peoples Nat. Gas Co. v. Federal Power Commission (1942) — App Div —, 44 PUR(NS) 375, 127 F(2d) 153, 159.

[23] Cf. Northern States Power Co. v. Federal Power Commission (1941) 118 F(2d) 141, 144, 39 PUR(NS) 23; Alabama Power Co. v. Federal Power Commission (1942) — App DC —, 44 PUR(NS) 197, 128 F(2d) 280, 285; Louisville Gas & E. Co. v. Federal Power Commission (1942) 129 F(2d) 126, 132, 45 PUR(NS) 145.

Section 209(b) unmistakably recognizes the likelihood of duality in regulation, and is designed to mitigate its effects, by providing for "conferences" and "joint hearings" by the Federal and state Commissions "regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such state Commissions and the [Federal] Commission." [24]

Other sections of the act are also pertinent. For instance, petitioner's suggested interpretation of the last words of § 201(a) would render § 204 partly superfluous and partly inoperative. For § 204(a) provides that no public utility shall issue securities without the authorization of the Federal Commission, while § 204(f) exempts from this requirement a utility which is both "organized and operating" in a state under whose laws its security issues are regulated by a state Commission. The suggested interpretation of § 201(a) would make § 204(f) unnecessary; and it would nullify § 204(b) which gives the Federal Commission jurisdiction over the security issues of a utility "organized" but not also "operating" in a state whose Commission is empowered by state law to regulate such securities.[25]

We cannot agree that Congress intended by the preamble that interstate transactions, which the Attleboro Case, *supra*, had held to be beyond the regulatory power of the states, should be exempt from Federal regulation where they are carried on by facilities which are also used for intrastate commerce.

Moreover, petitioner's suggested interpretation gives undue weight to a preamble clause worded as generally as § 201(a). Cf. Carter v. Carter Coal Co. (1936) 298 US 238, 280, 80 L ed 1160, 56 S C 855; National Labor Relations Board v. Jones & L. Steel Corp. (1937) 301 US 1, 129, 81 L ed 893, 57 S Ct 615, 108 ALR 1352.[26]

For that reason, we also reject the following suggestion: Although, as already noted, § 201(b), disjunctively confers jurisdiction over interstate transmission or interstate wholesale sales, yet, it is said, this disjunction must be disregarded because the preamble refers, conjunctively, to "the business of transmitting and selling electric energy"; this reference, it is urged, restricts the application of § 201(b) to a person which is in the joint business of transmitting and selling in interstate commerce. It will be noted that the result would be to exempt a corporation engaged in transmitting, but not selling at wholesale, in interstate commerce, a result which the legislative history shows to be in

[24] We have already noted that the preamble explicitly contemplates Federal regulation of matters relating to generation to the extent provided in Parts II and III, and that the conferees stated that the references to facilities for generation and local distribution were added to remove any doubts as to the Commission's jurisdiction over such matters where thus specifically provided.

[25] Other provisions which may result in duality of regulation are noted in the opinion in the Jersey Central Case (1942) 129 F (2d) 183, 189, 45 PUR(NS) 110.

[26] § 201(a) is to be contrasted with the very different preamble to the Public Utility Holding Company Act of 1935, § 1(c) which was enacted on the same day and as another Title I of the same legislation as the amended Federal Power Act.

See also the very different use of a declaration of policy in the Agricultural Adjustment Act of 1933, where many sections of the statute, following the preamble and conferring authority upon the Secretary, contain the words "in order to effectuate the declared policy"; see, e. g. 7 USCA §§ 608(b), 608(c)(16) A.

flat contradiction of the legislative purpose, for it would relieve such a company from both state and Federal regulation. The preamble of the Natural Gas Act, 15 USCA § 717(a), speaks in similar conjunctive manner of the "business of transporting and selling natural gas," while § 717(b) —like § 201(b) of the Federal Power Act— makes the Gas Act applicable, disjunctively, to "such transportation or sale." In the People's Natural Gas Case, *supra,* the court gave effect to the disjunctive treatment in § 717(b), paying no attention to the conjunctive description in the preamble.

7. We are not unmindful of the doctrine of such cases as Federal Trade Commission v. Bunte Bros. (1941) 312 US 349, 85 L ed 881, 61 S Ct 580; Palmer v. Massachusetts (1939) 308 US 79, 83, 84, 84 L ed 93, 31 PUR(NS) 242, 60 S Ct 34, and Kirschbaum v. Walling (1942) 316 US 517, 86 L ed 1638, 62 S Ct 1116, i. e., that, having in mind the "important aspect of the interplay of state and Federal authority," the courts should discountenance "inroads by implication on state authority," and that a congressional intent to extend Federal regulation should not be assumed to exist unless Congress is "reasonably explicit" in stating such a purpose. We think the congressional purpose to vest the Commission with the powers it here asserts does not rest upon mere implication and that the act and its legislative history make that purpose, to say the least, "reasonably explicit." There is no basis for the fear expressed in the brief of amicus curiae that a decision sustaining the Commission's orders will involve grave encroachments "upon the jurisdiction of state regulatory authorities."

8. The facts and the meaning of the statute are sufficiently clear so that, in arriving at our decision, we have not deemed it necessary to consider whether the doctrine of Gray v. Powell (1941) 314 US 402, 413, 86 L ed 301, 62 S Ct 326 [27] is applicable here, i. e., that the "experienced judgment" of the Commission, in its interpretation of the statute as applied to the facts, must be given great weight.

[9] 9. We have discovered no evidence in the record which shows that the findings of fact made by the Commission, necessary to support its orders, are not based on substantial evidence. We cannot, therefore, agree with petitioner that the Commission was under a duty to make further findings of uncontested facts, as requested by petitioner, which, to quote petitioner's brief, related to "legal criteria rejected"—and we hold correctly rejected—"by the Commission." Such a duty no more rests upon the Commission than it does upon a Federal trial judge, sitting without a jury, who is also required to make findings.

[10] 10. Petitioner assigns as error the failure of the Commission to include in the record before us any trial examiner's report. No such report was ever served on petitioner and petitioner based no arguments on the contents of such a report either here or before the Commission. So far as appears from its findings and legal

[27] Cf. Alton R. Co. v. United States (1942) 315 US 15, 86 L ed 586, 62 S Ct 432; Morgan Stanley & Co. v. Securities Exchange Commission (1942) 126 F(2d) 325, 43 PUR(NS) 240; Perkins v. Endicott Johnson Corp. (1942) 128 F(2d) 208.

conclusions, the Commission did not rely upon any such report, nor is it required to do so by the act. We see no reason why, in the circumstances, that report, if there be one, should be considered by us. Cf. National Labor Relations Board v. Air Associates (1941) 121 F(2d) 586. Kidder Oil Co. v. Federal Trade Commission (1941) 117 F(2d) 892 is not in point;[28] and we are not prepared to say that we would follow it even if the facts were identical.

The petition is denied and the orders of the Commission are affirmed.

L. HAND, C. J., concurring: I agree that there may be "facilities" for selling electric energy which are neither the apparatus which generates it, nor the wires which carry it to where it is used. What such selling "facilities" include it would be hard to say; but they must at least go so far as to comprise the selling organization with its paraphernalia of records and the like, and that is enough to dispose of this appeal. This reading is consonant with the purpose expressed in § 201 (a); and the use of the disjunctive in § 201 (b)—"for such transmission *or* sale"—to my mind turns the scale. As it is not necessary to go any further, I prefer to rest my concurrence upon this ground alone, leaving undecided whether the Commission has any jurisdiction over the "facilities for . . . generation" as such because they too are "facilities for sale."

FEDERAL POWER COMMISSION

Re Western Massachusetts Electric Company et al.

[Opinion No. 85, Docket No. IT-5755.]

Interstate commerce, § 22 — What constitutes — Power transmission.

1. Facilities of a power company are facilities for transmission and sale at wholesale of electricity in interstate commerce within the meaning of the Federal Power Act when, pursuant to an arrangement for the exchange of surplus power and a contract for the purchase of firm power, electric energy generated in other states and transmitted therefrom and consumed at points outside thereof is transmitted over the facilities of the power company and such energy is also sold to distributing companies for resale, p. 218.

Public utilities, § 73 — Status of power company — Federal Power Act.

2. A company whose facilities are used for transmission and sale at wholesale of electric energy in interstate commerce is a public utility within the

[28] There a report of the trial examiner had been served on the company which had filed exceptions thereto and submitted a brief and oral argument to the Commission in support of such exceptions; the court held that it had discretion to require, in such circumstances, that the report be made part of the record.

meaning of that term as used in § 203 of the Federal Power Act, 16 USCA § 824b, p. 218.

Public utilities, § 73 — Status of power company — Federal Power Act.

3. Companies buying electricity from another company which electric energy is, in the operation of a power exchange, transmitted from one state and consumed at a point outside thereof, are public utilities within the meaning of that term as used in § 203 of the Federal Power Act, 16 USCA § 824b, and each owns and operates facilities for the transmission or sale at wholesale, or both, of such electric energy, p. 218.

Consolidation, merger, and sale, § 13 — Necessity of Commission authorization — Federal Power Act.

4. Disposal of facilities subject to the jurisdiction of the Federal Power Commission and the acquisition of such facilities to effect a merger and consolidation of companies which are public utilities within the meaning of § 203 of the Federal Power Act, 16 USCA § 824b, are subject to the requirements of § 203 for authorization by the Commission, p. 219.

Consolidation, merger, and sale, § 23 — Grounds for approval — Savings in operating expense.

5. Savings in operating expenses, however small, should redound ultimately to the benefit of ratepayers and investors and, in the absence of adverse factors, are sufficient to establish that a proposed merger will beneficially affect the public interest, p. 222.

Consolidation, merger, and sale, § 24.1 — Grounds for approval — Elimination of agency — Step towards holding company dissolution.

6. A merger and consolidation of affiliated electric companies is beneficial when it brings about the elimination of an affiliated agency which acts in certain cases as accounting and disbursing agent and lays a foundation for dissolution of the parent holding company, p. 222.

Consolidation, merger, and sale, § 25 — Objection to approval — Inadequate depreciation reserves — Affiliated company.

7. Delay in proceedings to obtain approval of the merger of affiliated electric companies, pending a detailed study of depreciation reserves alleged to be inadequate, did not appear appropriate where the condition of the reserves would not be impaired by the merger and the interest of security holders would not be adversely affected inasmuch as there were no outside stock interests in any of the companies, p. 223.

Consolidation, merger, and sale, § 35 — Objection to approval — Effect on rate regulation — Affiliated companies — State Commission approval.

8. A merger of wholly owned electric subsidiaries of a holding company should not be denied on the ground that effective regulation of rates will be made more difficult, since contracts for power and services between affiliated companies are of little assistance and may be a detriment in determining the reasonableness of rates to ultimate consumers and the reasonableness of the terms of such contracts must be determined, and the making of proper cost allocations among areas served by a consolidated company is little, if any, more difficult than determining the reasonableness of the allocations necessarily implicit in such contracts, particularly where the state Commission has approved the merger upon terms intended to protect ratepayers, p. 223.

RE WESTERN MASSACHUSETTS ELECTRIC CO.

Consolidation, merger, and sale, § 30 — Objection to approval — Interference with municipal acquisition — Stipulation as to severance damage.

9. A stipulation providing that in the event of municipal acquisition of facilities of an electric company serving the municipality, the consolidated company or its successor would be limited in its claim for severance damage to the basis existing at the date of consolidation, is a proper and satisfactory means of eliminating the necessity of further consideration of a contention by the municipality that approval of a consolidation should be denied because of the adverse effect on the interests of the municipality in the event it should municipalize the utility, p. 224.

[December 17, 1942.]

APPLICATION *for approval of merger and consolidation of power companies; granted.*

By the COMMISSION: This matter comes before us on the application, as amended, of Western Massachusetts Electric Company, Turners Falls Power & Electric Company, United Electric Light Company, and Pittsfield Electric Company, for approval of a merger and consolidation under § 98 of Chap. 164 of the General Laws of Massachusetts of those four companies, whereby the Western Massachusetts Electric Company (hereinafter referred to as "Western") will acquire all of the assets and property of each of the other companies (hereinafter respectively referred to as "Turners," "United," and "Pittsfield") subject to all their obligations and liabilities and will issue to the holders of the stock of each of such companies, in place thereof, stock of Western having an aggregate par value equal to that of the stock of such companies so to be replaced. The separate corporate existence of said other three companies will disappear.

Jurisdiction

By the original application Turners stated that it owns and operates certain facilities "which may from time to time be used for the transmission of electrical energy in interstate commerce or for the sale of electrical energy at wholesale in interstate commerce. . . ." Western, United, and Pittsfield each disclaimed "any admission that it owns or operates any facilities for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce." In setting the application down for hearing the Commission required, among other things, that the applicants be prepared at the hearing to show facts relating to the question of their ownership and operation of facilities for the transmission and sale at wholesale of electric energy transmitted from any state and consumed at any point outside thereof. At the hearing Western, United, and Pittsfield submitted a statement withdrawing the aforesaid disclaimers and admitting that they do own and operate facilities for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce, and each admitted that it is a public utility within the meaning of Part II of the Federal

Power Act, and requested that it be treated as such and that the Commission approve its participation in the merger and consolidation.

[1–3] The evidence introduced at the hearing clearly establishes that each of the four companies is subject to the jurisdiction of the Commission as a "public utility" within the meaning of that term as used in § 203 of the Federal Power Act, 16 USCA § 824b, by reason of ownership and operation of facilities for the transmission and sale at wholesale of electric energy in interstate commerce.

Under an arrangement with The Connecticut Power Company and New England Power Company known as the Connecticut Valley Power Exchange, Turners exchanges surplus electric energy with those companies. Turners also purchases electric energy under contract for firm power with New England Power Company and has a contract with The Hartford Electric Light Company for power up to 20,000 kilowatts, half the capacity of a new unit being installed by the latter. In the operation of that Exchange and by reason of the purchase of electric energy under the contract with New England Power Company, electric energy generated in states other than Massachusetts (principally in Connecticut and New York) and transmitted therefrom and consumed at points outside thereof, is transmitted over facilities of Turners. Such electric energy is also sold by Turners to Western, United, Pittsfield, and others for resale.[1] Moreover, in the operation of the Exchange, electric energy generated in Massachusetts and transmitted therefrom and consumed at points outside thereof, principally in Connecticut, is transmitted over and by means of facilities of Turners. The facilities for such transmission and sales by Turners are facilities for transmission and for the sale at wholesale of electric energy in interstate commerce. Turners is, by reason of its ownership and operation of such facilities, a "public utility" within the meaning of that term as used in § 203 of the Federal Power Act. Jersey Central Power & Light Co. v. Federal Power Commission (1942) 129 F(2d) 183, 45 PUR (NS) 110; The Hartford Electric Light Co. v. Federal Power Commission, Nov. 25, 1942, *ante*, p. 198. Western, United, and Pittsfield each buys electric energy from Turners which electric energy is, in the operation of the Exchange, transmitted from one state and consumed at a point outside thereof, and each

[1] The chief electrical engineer of all of the applicants testified that he had made a record of energy flows for January, February, and March of 1942, from hourly meter readings as recorded on station log sheets, showing that electric energy in substantial amounts generated outside of Massachusetts and brought into Massachusetts over facilities of Turners was transmitted and sold at wholesale by means of facilities of all of the applicants for 249 hours on forty-five days in those three months. In addition, there were other times during the same three months when such energy was transmitted and sold at wholesale by means of the facilities of some of the applicants, but he had not ascertained their frequency. He illustrated the method by which he had traced the flow of such out-of-state energy over the applicants' system facilities by diagrams introduced in evidence as an exhibit. The diagrams showed for selected hours amounts and direction of flow of energy between each of the points on the system where lines are interconnected with other lines, generating plants, or loads. The method of tracing the flow of energy which applicants' engineer used was similar to that used by Commission engineers referred to in our Opinion No. 75, Re The Connecticut Light & P. Co. (1942) Docket No. IT-5665, 44 PUR (NS) 170.

owns and operates facilities for the transmission or sale at wholesale, or both, of such electric energy. By reason thereof each is a "public utility" within the meaning of that term as used in § 203 of the Federal Power Act.

[4] By the proposed merger and consolidation, Turners, United, and Pittsfield will each dispose of the whole of its facilities subject to the jurisdiction of this Commission, and each such disposal is therefore subject to the requirements of said § 203 for authorization by this Commission. By the proposed merger or consolidation Western will merge or consolidate facilities subject to the jurisdiction of this Commission which are owned and operated by it, with facilities subject to the jurisdiction of this Commission which are owned and operated by the other three companies, and such merger or consolidation upon the part of Western is therefore also subject to such requirements.

Turners Falls Hydroelectric Project License

From the original application it appeared that Turners owns and operates a hydroelectric development at and near Turners Falls, Massachusetts, on the Connecticut river. We have previously had occasion to consider, and have determined, that the Connecticut river, from its mouth up to and beyond a point above Turners Falls, is a navigable water of the United States (In Re Bellows Falls Hydro-Electric Corp. [1941] Docket No. IT-5584, 37 PUR(NS) 257). Upon preliminary consideration of the original application in the instant matter, it appearing that the aforesaid hydroelectric development was constructed and had been operated and maintained without license, permit, right of way, or other authorization by the United States, the Commission issued an order requiring the application to be supplemented to show cause, if any there was, why Turners should not be required, as a condition precedent to the authorization of the proposed disposal by merger and consolidation, to make due application for a license for said development pursuant to Part I of the Federal Power Act, and to agree to accept such license as the Commission may lawfully authorize to be issued for such project, and why the Western Massachusetts Electric Company should not be required to agree to join in such application and agreement if the proposed transaction is consummated, or in lieu of such a showing, to submit such application for license and agreement. Such an application and agreement were filed prior to the hearing, and the applicants have thereby removed that issue from the present proceeding.

The Commission has not heretofore considered or determined whether other streams, tributary to the Connecticut river, upon which are located other hydroelectric developments owned or operated by the applicants, are navigable waters of the United States. In the orderly discharge of our duties under the Federal Power Act, and in the light of present conditions, we cannot properly undertake at this time to determine those questions. It should, however, be made plain that full authority to consider, determine, and dispose of those questions is retained by the Commis-

sion, and that nothing in the present proceedings shall be deemed to prejudice our doing so. Neither shall our action in these proceedings be deemed to constitute a precedent for any waiver of the necessity of obtaining a license for facilities where it may properly be determined that a license is required, as a condition to an authorization or approval of a sale, lease, or other disposition or merger or consolidation of such facilities under § 203 of the act.

Consistency with the Public Interest

The applicants are all Massachusetts corporations. Western, United, and Pittsfield are engaged in the business of purchasing, generating, transmitting, and selling electric energy for domestic, commercial, industrial, and municipal purposes, and to other electric utilities, in their respective service areas located in western Massachusetts from the northern to the southern boundary of the state, and in and from the valley of the Connecticut river on the east to within the valley of the Housatonic river on the west. Their service areas are close and, in part, contiguous to each other. Turners is engaged in the business of generating, purchasing, transmitting, distributing, and selling electric energy at wholesale to Western, United, Pittsfield, and other electric companies and municipal plants, and in large blocks to industrial companies. All of its facilities are located in and between the aforesaid service areas.

All of the outstanding capital stock of each of the applicants is owned by Western Massachusetts Companies (hereinafter referred to as the "Holding Company"), a Massachusetts trust. As of the date of the hearing borrowings from the Holding Company amounted to $235,000 for Western; $2,300,000 for United; and $160,000 for Pittsfield. These borrowings are "on demand," the rate of interest being fixed at the cost to the Holding Company of obtaining the money, without any additional discount, premium or fee.[2] The only other outstanding securities of any of the applicants are bonds in the amount of $3,000,000 issued by Turners and secured by a first mortgage to the Merchants National Bank of Boston, Massachusetts, as trustee.

Western Massachusetts Companies is purely a holding company and has no subsidiary companies other than the applicants except The Quinnehtuk Company, a real estate corporation, and Western Massachusetts Agency, Inc. (hereinafter referred to as the "Agency"), which acts in certain cases as accounting and disbursing agent for the applicants but without profit to itself.[3] Neither it nor the Quinnehtuk Company pays dividends. The Holding Company's stock is dealt in the "over the counter market." The stock is widely distributed, no one holder thereof having more than 2.4 per cent of the total. None of the stock is known to be held by any other electric utility.

[2] The rate of interest on the Holding Company's notes is 2.7 per cent. The cost of the issue of those notes was 2/10 of one per cent, which is added and charged to the company borrowing from the Holding Company, so that the interest charged for the money borrowed is 2.9 per cent.

[3] By order of the Securities and Exchange Commission, issued March 27, 1936, 1 SEC 323, 16 PUR(NS) 107, the Holding Company was exempted from the provisions of the Public Utilities Holding Company Act, and is still so exempt.

The several applicants have substantially the same officers and largely the same directors. The same individual serves as chief electrical engineer of all of the applicant companies. Charges for his work for each company, and for that of the force working under his supervision and direction, are billed to that company through the Agency at cost. The Agency pays the salaries and expenses of a purchasing department, which acts as a joint purchasing agent, the general superintendent of meters and a force under him, a few other operating men, and the applicants' officers and their secretaries. Overhead expenses are allocated approximately in proportion to the gross revenues of the applicant companies, but subject to adjustment in the discretion of an executive committee. Materials purchased by the purchasing department are billed by the manufacturer directly to the particular company for whose account they are purchased and are not billed through the Agency. In other respects the business of the several companies is conducted separately. Accounts, for example, are kept separately, but under the responsible direction of the same individual who is treasurer of all of the companies.

The applicants say in their application that their affiliation under the Holding Company — "has assured Turners of a market for its electric energy and it has assured the other companies of a source of supply for their constantly increasing loads without the necessity of building additional plants of their own which, for small companies, is often a speculative and expensive operation. By operating the companies as nearly as possible as a single system, the Holding Company has also given them the benefit of very substantial economies of operation and also, in the opinion of the applicants, a higher grade of executive, managerial, and engineering service than they could possibly have obtained for themselves at the same cost if they had remained separate.

"As time has gone on, for the sake of simplification and unification of corporate structures and of accounts, records, reports, and returns, certain consolidations of the companies forming the system of Western Massachusetts Companies have already been made."

It is therefore obvious that any additional benefits from unification which can be achieved by the proposed merger and consolidation will necessarily be of a limited nature.

In support of their application the applicants state that they believe that— "If and when the system as a whole needs additional steam-generating capacity, which is fairly imminent because of the requirements of National Defense, it will be far better to have the new plant erected for that purpose (which should obviously be a large plant erected and operated from the point of view of the system as a whole) owned, financed, and operated by the proposed consolidated company rather than by any one of the separate companies now existing. Also, in the opinion of the applicants, the consolidation will be beneficial in that it will eliminate the difficult questions which now arise in connection with contracts and transactions between the separate companies now under common ownership. Finally, the consolidation will be beneficial in the

opinion of the applicants in that it will lay the foundation for a later dissolution of the Holding Company."

The possibility of procuring and installing additional generating facilities appears hypothetical under present conditions, and a contract for additional power needed to enable it to carry this winter's peak load has been entered into with The Hartford Electric Light Company. No likelihood of any major financing need appears imminent. While it is true that it will be unnecessary to execute contracts covering transactions among what are now the separate applicant companies, the fundamental problems of allocations of costs, properties, etc. will remain if the areas now being served by each applicant are considered separately for rate-making purposes, and no real benefit in this respect will flow from the merger.

[5] The evidence of savings to result from the merger is of a general and indefinite nature, except as to minor matters such as reductions in the number of directors' meetings to be held and the number of reports to be made to governmental agencies. The treasurer testified that he hoped that over the course of a few years the merged company would effect economies by reason of the merger, and he estimated that such economies might go to ten or twelve thousand dollars a year. The president of Turners spoke of "rather definite savings" which he said could and would be effected. As we said in Opinion No. 69, Re Pacific Power & Light Co. (1941) Docket No. IT–5469, 42 PUR(NS) 36, 41: "Savings in operating expenses, however small, should redound ultimately to the benefit of ratepayers and investors; and in the absence of adverse factors, are sufficient to establish that the proposed merger will beneficially affect the public interest. . . ." In other cases slight savings incident to the elimination of unneeded corporate entities have enabled us to find that the proposed merger would be consistent with the public interest—Re Missouri General Utilities Co. (1938) Docket No. IT–5477, 1 Fed PC 717; Re Iowa Transmission Line Co. (1938) Docket No. IT–5496, 1 Fed PC 752; Re Missouri Transmission Co. (1938) Docket No. IT–5495, 1 Fed PC 750; Re Susquehanna Transmission Co. of Pennsylvania (1939) Docket No. IT–5582, and Re Pennsylvania Transmission Co. (1939) Docket No. IT–5583. In Re Virginia Pub. Service Co. (1942) Docket No. IT–5749; Re The Eastern Shore Pub. Service Co. of Maryland (1942) Docket No. IT–5774.

[6] We are inclined to regard certain simplification in corporate relations to which the proposed merger will conduce as being of significance. If the merger and consolidation is consummated it is not intended that the Agency shall continue to be maintained. In bringing about the elimination of the Agency, and in laying a foundation for dissolution of the Holding Company, we believe the proposed merger and consolidation will be beneficial.

Intervener's Contentions

The mayor of the city of Springfield, Massachusetts, appears as intervener on behalf of that city. The city presses the contention that the companies' depreciation reserves are inadequate, that the merger will make

effective regulations of rates more difficult, and that the merger will adversely affect the interests of the city if the city should undertake to "municipalize" the electric utility system within the city limits, by increasing the amount of severance damages which the city might have to pay.

[7] The depreciation reserves are attacked as inadequate both because of the bases upon which appropriations thereto have been made (or the absence of adequate bases) and because the applicant companies have properties in their accounts which the intervener sought to show were obsolete and should heretofore have been charged off to the reserve. Where depreciation reserves are inadequate[4] in substantial amount, proper adjustments should be made regardless of whether merger or other proceedings are in prospect. In the instant case, all of the applicant companies are wholly owned subsidiaries of the same holding company. The condition of the reserves is not impaired by the proposed merger. The interests of the security holders are not adversely affected, inasmuch as there are no outside stock interests in any of the applicant companies. Accordingly, while it may be advisable in certain proceedings of this nature to inquire into the adequacy of the depreciation reserves, under the circumstances of this case it would appear appropriate not to delay the proceedings pending a detailed study thereof.

[8] The contention that effective regulation of rates will be made more difficult by the consummation of the proposed merger and consolidation seems to proceed from an assumption that the present accounting and corporate separations among the applicants make it easier for any particular community to determine the reasonableness of the rates being charged it. There is certain merit in this contention. On the other hand, we are of the opinion that contracts for power and services between companies which are subsidiaries of the same holding company, are of little assistance and may be a detriment in determining the reasonableness of rates to ultimate consumers. The reasonableness of the terms of such contracts, in the light of all other intercorporate relations, must be determined. It would appear that the making of proper cost allocations among areas served by a consolidated company is little, if any, more difficult than determining the reasonableness of the allocations necessarily implicit in contracts among companies dealing with each other at less than arm's length.

The question of weighing interests of ultimate consumers in the city of Springfield against those of consumers in other areas served by applicant companies was presented to the Massachusetts Department of Public Utilities in connection with its consideration of the proposed merger. That agency heard the evidence and con-

[4] After the merger the depreciation reserve of the merged company will be approximately 21 per cent of total utility plant. On the evidence before us we cannot undertake to determine whether additional items carried in the plant account should be charged to the depreciation reserve. From the nature of the showing made by the city, it appears that the question is one which can most effectively be examined, in the course of the orderly administration of the act and of our rules and regulations thereunder, after the original cost and accounting reclassification studies of the applicant companies have been studied by the Commission's staff. The filing of such studies was not completed until after the hearing in this proceeding, and study thereof by the Commission's staff has not yet been completed.

tentions of the city of Springfield, and approved the merger upon conditions which appear to have been intended to protect the city from any added rate-making difficulties which might flow from the merger. Upon the record before us we cannot determine that the merged corporation will be too large for most effective regulation, or that consumer interests in the aggregate will be affected adversely.

[9] With respect to the severance damage question raised by the city, in response to an informal suggestion, the applicants have submitted a stipulation whereby they agree as follows:

Stipulation

In event that the city of Springfield, or any public agency, shall acquire or undertake to acquire from the consolidated company or its successor in interest the electric utility facilities serving the city of Springfield, the consolidated company or such successor in interest will not claim or be entitled to receive any damages on account of the severance of such property from any property other than the property owned by the United Electric Light Company at the time of the consolidation and such property as the consolidated company or its successor in interest shall own at the time of such acquisition in substitution for, or in extension and enlargement of, any property owned by United Electric Light Company in the territory served by it at the time of consolidation, or in any additional territory into which the distributing system owned and operated by it at the time of consolidation may thereafter be extended; provided, that there shall be no such severance damages with respect to any property in such additional territory which United Electric Light Company would not have owned if there had been no consolidation and no such severance damages with respect to any property in such additional territory in any greater amount than it would have been for United Electric Light Company had there been no consolidation, as may be determined by the Federal Power Commission.

Western Massachusetts Electric Company by Harry E. Duren, President; Turners Falls Power & Electric Company by Fred C. Abercrombie, President; United Electric Light Company by Sidney W. Stevens, President; Pittsfield Electric Company by William A. Whittlesey, President.

Dated this 4th day of December, 1942.

The submission of this stipulation is, in our opinion, a proper and satisfactory means of eliminating the necessity for further consideration of intervener's contention. Inasmuch as the stipulation is for the benefit of the city and one upon which the city should be able to rely as binding upon the companies to the merger and the resulting company, our order will be conditioned to require the delivery to the city of an authenticated copy thereof, together with due corporate action by the resulting corporation ratifying and adopting the execution and delivery of the stipulation.

For the reasons given, we are of the opinion and find that, subject to the conditions hereinabove referred to and to the usual conditions of our orders of authorization and approval, the proposed merger and consolidation will be consistent with the public interest.

An order will be entered accordingly.

ORDER

Upon consideration of the application of Western Massachusetts Electric Company, Turners Falls Power & Electric Company, United Electric Light Company, and Pittsfield Electric Company, as amended, and the record thereon, the Commission having on this date made and entered its findings and opinion (Opinion No. 85), which are hereby referred to and made a part hereof by reference;

The Commission *orders* that:

(A) The proposed disposition and merger and consolidation of facilities whereby Western Massachusetts Electric Company will acquire all of the assets and property of Turners Falls Power & Electric Company, United Electric Light Company, and Pittsfield Electric Company, subject to all their obligations and liabilities, is hereby authorized subject to the terms and conditions hereof.

(B) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of costs, or any other matter whatsoever which may come before this Commission or before such other regulatory body, and nothing in this order shall be construed as an acquiescence by this Commission in any estimates or determinations of costs or any valuation of property, claimed or asserted.

(C) Nothing in this order contained or in the proceedings in connection with the above-entitled matter shall be construed to be a waiver of, or in any manner to prejudice a determination of the necessity for obtaining, or the propriety of requiring application for, a license from this Commission for the construction, operation, or maintenance by any of the applicant companies or the merged company of any project structure for which license may be required under the River and Harbor Acts, or the Federal Water Power Act, or by or under the Federal Power Act.

(D) After consummation of the proposed merger and consolidation, Western Massachusetts Electric Company shall deliver to the mayor of the city of Springfield, Massachusetts, for and on behalf of the city of Springfield, a duplicate executed copy of the stipulation filed by the applicant in the above-entitled matter December 7, 1942, and dated December 4, 1942, together with a copy of a resolution or resolutions duly adopted at a stockholders' meeting of said Western Massachusetts Electric Company, and binding upon the stockholders of the merged corporation, and ratifying, confirming, and adopting the execution and filing of said stipulation, and shall file with the Commission an affidavit of the making of such delivery within six months from the date hereof.

(E) This authorization shall expire unless acted upon within ninety days after the entry of this order.

(F) Western Massachusetts Electric Company shall report with reference to the subject matter hereof as required by this Commission's Rules of Practice and Regulations and shall file proposed accounting entries within six months next following the date of the consummation of the proposed

merger and consolidation as required by the provisions of the Commission's Uniform System of Accounts; but nothing contained in this order shall be construed as relieving the United Electric Light Company, the Turners Falls Power & Electric Company and the Pittsfield Electric Company or any of them from any applicable requirements prescribed by the said Uniform System of Accounts.

ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

Re Arkansas Power & Light Company

[Docket No. 225.]

Reparation, § 32 — Excess revenues — Rates permitted by Commission.

1. The fact that rates which resulted in excess revenue were permitted by the Department during the pendency of a rate investigation should not prevent the Department from taking any reasonable action, within its powers, that will secure a return of the excess to consumers, p. 229.

Rates, § 39 — Commission jurisdiction — Retention after interim orders.

2. Jurisdiction over a public utility company acquired by the Department for the purposes of a general rate investigation is not lost by interim rate reduction orders based upon facts before the Department during the investigation, p. 229.

Rates, § 86 — Commission jurisdiction — Retroactive rate orders.

3. The Department has power to issue a rate order at any time while it has jurisdiction of the parties and cause, and it can make the order effective on any date prior to its issuance subsequent to acquiring such jurisdiction, p. 229.

Reparation, § 11 — Commission powers — Date of retroactive rate order.

4. The Department, upon exercising its power to make a rate order effective on any date prior to its issuance subsequent to acquiring jurisdiction, can require a public utility to refund any amounts which it may have collected in excess of the new rate between its effective date and that of its issuance, p. 229.

Reparation, § 15 — Excessive rates — Expenditures by utility.

5. The Department should not require refunds after a utility has made commitments which would result in expenditure of the difference between rates collected and new rates established retroactively even though it represents excess earnings, p. 229.

Reparation, § 11 — Commission powers — Refund instead of retroactive rate order.

6. The Department, in view of its power and jurisdiction to enter a retroactive rate order and to direct a refund of excess revenues, has power to order a refund of excess revenue instead of putting into effect retroactively schedules reducing rates and then ordering a refund of the difference between the old and the new rates, where, in view of unsettled conditions, an upward change in the rates might be necessary in the near future, p. 229.

RE ARKANSAS POWER & LIGHT CO.

Reparation, § 39 — Customers entitled to benefit — Contributions to profit.

7. Those customers who have contributed most to net profits should receive a greater portion of a refund of excess revenues collected under a rate schedule where certain customers received service at special and not basic or standard rates, which are comparatively low and contribute but little, if any, to net profit, p. 230.

Reparation, § 44 — Segregation of refund.

8. A public utility company which is required to make a refund of excess revenues should, for accounting purposes and protection of the amount ordered to be refunded during the period required to determine the names and amounts to be refunded to each customer, take the amount of refund and segregate and separate it from its revenues and cash and place it in a bank to a special account, to be held in trust solely for the purpose of making the refunds to those entitled thereto, p. 231.

[November 27, 1942.]

ORDER *to show cause why public utility company should not be required to refund excess revenues collected during a rate investigation; refund ordered.*

By the DEPARTMENT: On November 7, 1942, the Department issued an order requiring the Arkansas Power & Light Company (hereinafter referred to as the respondent) to appear on November 24, 1942, later extended by consent to November 27, 1942, and show cause, if any it could, why it should not be ordered and directed to refund to its 1942 electric consumers a portion of the electric revenue collected by and accruing to it by reason of its 1942 electric operations.

A response to the show cause order was filed. The respondent denied that its 1942 electric revenue was excessive and that the Department had jurisdiction to enter any order directing a refund. Its most serious contention is that the Department has no express nor implied power to direct or require a utility, the rates of which are subject to its jurisdiction, to make a refund of any revenue after it has been collected or has accrued, i. e., that the Department has no power or authority to make or issue an order the effect of which is retroactive in any respect.

Amount of Refund

At the hearing there was much testimony with respect to the earnings of the respondent from its electric operations in 1942. It would unduly extend this opinion and order to discuss this testimony in detail. Suffice it to say that the Department finds that the respondent can make a refund of $625,000 from its gross electric revenue realized in 1942, pay all of its operating expenses, interest upon its bonded indebtedness, dividends upon its preferred stock, Federal and state income taxes on the remainder of its earnings, set aside an ample sum for annual depreciation and to amortize its debt discount and expenses, and be able to carry at least $140,000 into its surplus account. Under all the circumstances in proof a refund in the amount stated would be fair and reasonable.

The Department Has the Power to Order a Refund

The circumstances which moved the Department to issue the show cause order and which justify it in issuing this order briefly are:

On July 2, 1937, the Department initiated a system-wide investigation of the rates, rules, and practices of the respondent's electric operations; directed the respondent to file a complete inventory and appraisal of all the property used and useful in supplying electric service, and directed the Department's engineering and accounting staffs to immediately begin and to continue as rapidly as possible to completion the investigation and the compilation and assembling of information necessary to establish a rate base and reasonable rates for all electric service furnished by the respondent subject to the jurisdiction of the Department.

On January 30, 1940, the respondent filed an inventory and appraisal as required by the 1937 order, showing an estimated reproduction value new and less depreciation as of December 31, 1937. The inventory and appraisal also show that the respondent supplies electric service in more than 55 counties of the state and that the estimated value of the property used in this service is more than $50,000,000.

At the time of the 1937 order the staff of the Department was engaged, and remained so engaged until late in 1940, in investigating the rates and operations of a natural gas company with large and extended operations in Arkansas. Because of this fact and because of the Department's inability to secure sufficient trained personnel and the loss of many technical employees by both the Department and the respondent, due to the emergency, the work and investigation necessary for the establishment of a rate base and reasonable rates for the respondent's electric operations has not been completed.

However, during this investigation and since the Department acquired jurisdiction of the respondent by its 1937 order, the Department, from time to time, when the facts justified such action, has ordered and directed the respondent to reduce its rates for domestic, commercial, and industrial service. The aggregate of these reductions amounts to $1,006,000, the last of these reductions having been ordered in the early part of the year 1942.

Consumers in the territory served by the respondent have in 1942 enjoyed more prosperity than had theretofore been their lot, because of the location of, and their ability to secure employment in, war industries and allied activities. While the Department, at the time it issued the rate reduction order in the early part of 1942, realized that this wave of prosperity was on its way, it could not then estimate or foretell the duration of such prosperity or just what effect it might actually have upon the respondent's revenue and expenses with that certainty necessary to justify or sustain a further reduction in electric rates.

Because of these conditions, the Department throughout the year 1942 has kept a continuous and close check of the respondent's electric revenue and expenses of that year. These studies of the actual revenue and expenses for ten months and estimates

for two months are now convincing that, despite the several rate reductions, the respondent during the year 1942 will receive revenue amounting to $625,000 in excess of that which the Department believes, and for the purposes of this order finds, to be fair and reasonable.

[1] While the rates which resulted in the excess revenue were, under the circumstances, permitted by the Department, that fact should not now prevent the Department from taking any reasonable action, within its powers, that will secure a return of said excess to the consumers of the respondent.

There is no room for doubt, had it been possible, that the Department had the power to enter an order prior to January 1, 1942, reducing the respondent's rates for the ensuing year to the extent that its revenue from its electric operations in 1942 would have been $625,000 less than it now with reasonable certainty appears that it will be.

[2] By the order entered and served in this cause on July 2, 1937, the Department acquired jurisdiction of the respondent for the purposes of a general rate investigation. This jurisdiction was not lost by any of the rate reduction orders subsequently issued. They were, like this order, merely interim orders based upon facts then before the Department. They in no sense ended the investigation.

[3–6] The Department is of the opinion that it has the power to issue a rate order at any time while it has jurisdiction of the parties and cause; that it can make the order effective on any date prior to its issuance, subsequent to acquiring such jurisdiction, and that it can require any public utility to refund any amounts which it may have collected in excess of the new rate between its effective date and that of its issuance. While the Department believes it has such power and jurisdiction it should, however, not require refunds after the utility has made commitments which would result in expenditure of the said difference, even though it represents excess earnings.

While the act creating and empowering the Department has not been construed by our supreme court, courts of other states have construed acts similar to ours. In each instance the regulatory authority was held to have the authority and the power which the Department now holds it has, as set out above.

In Pacific Coast Elevator Co. v. Department of Public Works (1924) 130 Wash 620, PUR1925B 618, 228 Pac 1022, the Department of Public Works of the state of Washington on June 20, 1922, on its own motion, instituted a general rate proceeding. The order entered therein on November 20, 1922, at the conclusion of the rate investigation, put into effect reduced rates as of and from July 1, 1922, and required the elevator company to refund all amounts collected by it after that date in excess of the new rates. In an attack upon the order, it was contended that the order was retroactive and beyond the power of the Department, unless it was specifically authorized by statute. It was conceded that there was no such statute. The court, however, held that the Department had the power to make the rates established by its order effective as of any date subsequent

to the time the Department acquired jurisdiction of the cause and parties and to order a refund of the difference between the two rates. In so holding the court followed and adopted the reasoning and holding of the opinion in the very early Massachusetts case of Boston & Worcester R. Corp. v. Western R. Corp. (1859) 14 Gray 253. The holding of the Washington supreme court was reaffirmed in State ex rel. Standard Oil Co. v. Department of Public Works (1936) 185 Wash 235, 12 PUR(NS) 229, 53 P(2d) 318.

In the Massachusetts Case the Commission of that state had issued an order and fixed its effective date prior to that on which jurisdiction of the parties was acquired. The court held that the Commission could not give its order an effective date prior to that on which jurisdiction was acquired and therefore the order could only be effective from that date.

In United Gas Pub. Service Co. v. State (1935) 13 PUR(NS) 86, 100, 89 SW(2d) 1094, the court of civil appeals of Texas held, and the supreme court of that state refused to review, that: "The rule is settled that a Public Utility Commission has the power to make its rate order retroactively effective as of any date after it has actually acquired jurisdiction of the cause, and, in consequence, may order the refund of excessive rates paid from and after the retroactively effective date of the rate order." Citing cases.

The Department therefore holds that it has the power and jurisdiction to now enter an order putting into effect rates as of January 1, 1942, and directing that any amount collected by the respondent in excess of those rates be refunded.

In the show cause order the Department found, the proof sustains, and it now repeats, that, in view of the unsettled conditions because of the emergency, to require the respondent to further reduce its rate schedules might, in the near future, require an upward change in the rates so established.

Therefore, the Department believes and finds that the wiser course for it to pursue is to order a refund of the amount of respondent's excessive revenue received in 1942, instead of putting into effect retroactively schedules reducing rates and then to order a refund of the difference between the old and the new rates. The result in either event is exactly the same. Where the result of either of two courses is the same no one can successfully urge that the Department pursued the wrong course.

To Whom the Refunds Should Be Made

[7] Since the amount of the refund is determined by making allowance, first, for all expenses, taxes, depreciation, fixed charges, and other items chargeable to gross revenue, the amount of the refund has necessarily been made possible to a great extent by the customers of the respondent who have, by the payment for service, contributed to the greatest extent to this profit. Therefore, those customers who have contributed most to the net profits should receive a greater portion of the refund.

The respondent has certain customers who receive service at special and not basic or standard rates. That is,

the rates applicable to their particular service are not applicable to the service to any other customer. These particular rates are comparatively low and contribute but little, if any, to the net profit of the respondent and, in many instances, these rates have been formulated, more or less, upon an incremental basis because the service is highly competitive.

The Department has caused its chief engineer to make a careful check of the numerous schedules under which the respondent has been, in 1942, supplying all classes of service and, based upon his testimony, the Department is of the opinion, and so finds, that the most equitable distribution of the refund herein ordered would be to those customers of the respondent who have received service prior to December 1, 1942, under any of the following designated schedules, the numbers referred to being those of the respondent assigned to each particular schedule:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 22, 23, 24, 40, 42, 43, 44, 45, 47, 74, 77, 105, 225, 401, 402, 407, 506, 553, 601, 602, 603, 604, 605, 609, 611, 613, 614, 615, 617, 618, 619, 620, 621, 622, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 639, 640, 641, 642, 643, 644, 648, 649, 650, 651, 654, 658, 661, 663, 664, 665, 667, 668, 669, 670, 672, 675, 677, 678, 679, 680, 681, 705, 707, 708, 709, 710, 712, 713, 714, 715, 718, 720.

Segregation of Refund

[8] For accounting purposes and the protection of the amount ordered to be refunded during the period necessarily required in determining the names and the amount to be refunded to each of the customers served under the schedules hereinbefore referred to, the respondent should be ordered and directed to take the sum of $625,000 and segregate and separate it from its revenues and cash and place it in a bank to a special account, to be there held in trust solely for the purpose of making the refunds to those entitled thereto, and the respondent should immediately do so, and make the necessary entries upon its books and records showing that fact.

It is therefore *ordered:*

1. That the respondent be, and it is hereby, directed to immediately segregate and separate from its electric revenues in 1942 the sum of $625,000 and place it in a bank as a special account to be designated "Arkansas Power & Light Company 1942 Refund," to be there held in trust for the sole purpose of making the refunds to its customers as herein directed, and it is further directed to make the necessary entries upon its books and records showing that it has done so.

2. That the respondent be, and it is hereby, directed and required to refund the sum of $625,000, hereinabove directed to be placed in a special trust account, to those of its customers who received service prior to December 1, 1942 under the schedules hereinbefore designated and set out; the refund to each customer entitled thereto shall be in the proportion which the total amount respectively billed them for service in 1942 bears to the total amount to be refunded, and the refunds shall be made by check.

3. That the respondent shall, as

soon as possible after this date, file with the Department a list showing, with respect to each customer entitled to a refund, the name, address, the amount billed in 1942 and the amount to be refunded.

4. That nothing herein contained shall in any wise be construed as ending the rate investigation begun by this Department by its order of July 2, 1937.

5. That the effect of this order shall be exclusively confined to the revenues which the respondent will receive from its electric operations in the year 1942.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Federation of Citizens' Associations et al.

v.

Capital Transit Company

[Formal Case No. 309, Order No. 2278.]

***Discrimination**, § 95 — Bus and street car fares — Sale of tokens.*

The sale of six tokens for 50 cents rather than the sale of three tokens for 25 cents for transportation on busses and street cars does not constitute an unjust or unreasonable discrimination.

(HANKIN, Commissioner, dissents.)

[May 12, 1942; November 20, 1942.]

APPLICATION *for order requiring sale of three tokens for 25 cents instead of six tokens for 50 cents; denied.*

By the COMMISSION: This matter was heard on the application of the Federation of Citizens' Associations and the Federation of Civic Associations that this Commission order the sale by Capital Transit Company of three tokens for 25 cents, instead of six tokens for 50 cents, as is presently provided in Order No. 1634, dated November 3, 1937, 21 PUR(NS) 26. The issue in this proceeding was specifically limited by the Commission to the question as to whether the sale of six tokens for 50 cents rather than the sale of three tokens for 25 cents constitutes an unjust or unreasonable discrimination.

The record established at the hearings held on this matter beginning January 30, 1942, does not in the opinion of the Commission justify a finding that the sale of six tokens for 50 cents as required by the terms of Order No. 1634 constitutes an unjust or unreasonable discrimination.

It is *ordered:*

That this application be and it is hereby denied without prejudice.

Chairman Hankin dissents for the reasons set forth in his accompanying dissenting opinion.

HANKIN, Commissioner (formerly Chairman), dissenting: By Order No. 1634, issued November 3, 1937, *supra*, this Commission established rates and charges of the Capital Transit Company for transportation of passengers by bus and street car within the District of Columbia, and provided, among other things, that tokens shall be sold at the rate of six for 50 cents. The rates now in effect on the street cars and busses of the Capital Transit Company are: (1) A pass, entitling the holder thereof to an unlimited number of rides for $1.25 per week; (2) six tokens for 50 cents, entitling the holder to six rides at $8\frac{1}{3}$ cents per ride; and (3) 10 cents cash fair for a single ride.

Shortly after the issuance of Order No. 1634 and continuously thereafter, the Commission received complaints that the charge of 50 cents for six tokens was burdensome and resulted in unjust and unreasonable discrimination. Finally applications were filed by the Federation of Citizens' Associations and the Federation of Civic Associations requesting that the Commission order the sale of three tokens for 25 cents in lieu of six tokens for 50 cents. The matter was set for hearing, and hearings were held on January 30, January 31, and February 3, 1942. The Commission then issued Order No. 2278, (printed herewith), denying the applications "without prejudice."

Proper administrative procedure requires that upon a record made, the Commission shall make its findings of fact and conclusions of law from which the order might flow by necessary implication. Such procedure in controverted cases is dictated by the necessity of avoiding arbitrary action. In this case the Commission made no findings of fact or conclusions of law. After reciting that applications had been filed requesting this change in the sale of tokens, and after indicating that the question at issue was whether the existing regulation governing the sale of tokens involved unjust or unreasonable discrimination, the Commission stated: "The record established . . . does not in the opinion of the Commission justify a finding that the sale of six tokens for 50 cents as required by the terms of Order No. 1634 constitutes an unjust or unreasonable discrimination." This is not a finding of basic facts leading to a conclusion which would require a denial of the application. It is rather a description of a general psychological reaction which the Commission entertains toward the record in the proceeding. It is a type of statement which can with equal force be made about any record, whether the decision is actually based on facts or on mere caprice, and at times gives the erroneous impression that the decision is dictated by the facts and the law of the case. The recital of this order in no way acts as a safeguard against arbitrary, unreasonable, and capricious administrative action. It wholly disregards the established rule of administrative law that an order of a Commission must be supported by findings (findings of basic facts, not mere conclusions or inferences of fact), and that the findings must be supported by the evidence.

The decision of the Commission in

this case is devoid of any findings which would conform to this salutary and fundamental rule of administrative conduct. On the contrary, if findings were made, supported by the evidence, they would of necessity lead to the conclusion that the applications should be granted.

1. There is some evidence showing that the sale of six tokens for 50 cents interferes with and delays bus and street car transportation. It has been testified that the sale of six tokens for 50 cents, often involving giving change from a dollar, consumes more time than if the sales were made at the rate of three tokens for the convenient coin of 25 cents, which is more frequently available than a 50-cent piece. There is undoubtedly some delay involved in these sales and in making change. Against this evidence, however, one must also balance the fact that twice as many sales would have to take place, if three tokens were sold for 25 cents, than if six tokens were sold for 50 cents, and there is no evidence to support a finding that the present sale of tokens takes more than twice the amount of time which would be consumed by each sale of three tokens for 25 cents. Therefore, the application cannot be entertained because of any bearing the relief sought might have on the efficiency of transportation.

2. The evidence shows that the average use of the weekly pass is equivalent to approximately thirty rides per week. In other words, the holder of the pass pays on the average of a little more than 4 cents per ride; one purchasing tokens pays $8\frac{1}{3}$ cents per ride, or 100 per cent more than the holder of the weekly pass; one paying cash for a single ride must pay 10 cents, i.e., 150 per cent more than the holder of the pass, or 25 per cent more than the holder of a token. There is, therefore, discrimination in the payment of fares in the sense that while one passenger pays one rate of fare per ride another pays a different rate of fare.

Paragraph 2 of our statute, after prescribing that all charges for any facility or services shall be reasonable, just and nondiscriminatory, provides: "Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful." In Par. 88 it is provided that whenever, after hearing and investigation, the Commission finds that any rate is unreasonable or "discriminatory," it shall have the power to regulate, fix, and determine the same as provided in this section, which, of course, means to establish a rate which is reasonable, just, and nondiscriminatory. Thus the statute forbids any kind of discrimination.

There are other provisions, notably those pertaining to our investigations, which indicate an intent that those discriminations should be eliminated which are unjust in their nature. Thus Par. 38 provides that upon its own initiative or upon reasonable complaint made that any rate is "in any respect unreasonable or unjustly discriminatory," the Commission may proceed to make an investigation. Paragraph 41 provides that if upon such investigation it is found that any regulation or service complained of is "unjustly discriminatory," the Commission shall have the power to determine and substitute therefor regulations which are just and reasonable. Paragraph 44 provides that whenever the Commission shall believe that any rate or

charge may be "unreasonable or unjustly discriminatory," it may, on its own motion, summarily investigate the same with or without notice. Because of these provisions, it has been suggested that the statute does not in fact forbid discrimination, but only unjust discrimination.

I think the argument is erroneous. The statute does forbid discrimination. It authorizes action by the Commission when the discrimination appears to be unjust. A mere differential in the rates may or may not be unjust, as, for example, when the cost of operation in one instance is different from the cost of operation in another. But that only means that once discrimination is established, the burden of showing that it is a justifiable discrimination is on the utility. In this case, the Capital Transit Company sought to explain that the discrimination in rates flowing from the above schedules was analogous to the differentials found between wholesale and retail rates. The argument was spurious. The Capital Transit Company is not, either by statute or by the rules of this Commission, authorized to engage in what might be termed wholesale transportation as distinguished from retail transportation rendered to each passenger. But even if the discrimination could be justified on the ground that in the one case the company sells one ride while in a second case it sells six rides, and in a third case it sells an unlimited number of rides, the difference in the price charged must have some reasonable relation to the differences in the cost of operation. There is no evidence in the record justifying the differentials in rates on this basis.

While no showing has been made by the company that the discrimination in rates is "just," there is ample evidence that the discrimination is unjust, in the sense that it works a hardship on some classes of persons in the District of Columbia.

It is a well-established fact that the lesser the income of the person the less likely he is to have as much as $1.25 at any one time available for transportation. If he is so fortunate as to have that amount available for transportation he may avail himself of rides at the rate of 4 cents. If he is not, then he may nevertheless avail himself of rides at the rate of 8½ cents per ride, provided he has available at any one time 50 cents for transportation. If the passenger is in a still lower income group and does not have 50 cents available for transportation, he must pay 10 cents per ride, though he may have 25 cents available for transportation. In other words, the crucial discrimination in this case operates against persons who may have as much as 25 cents, but not as much as 50 cents, to spend for transportation at one time. If he does not have 50 cents, he is penalized to the extent of 25 per cent of the charge for transportation. Evidence introduced by an expert from the Bureau of Labor Statistics of the United States Department of Labor demonstrates that this discrimination constitutes a real hardship on persons in the low income groups.

The company introduced evidence to show that large numbers of persons in low income groups, notably domestics, ride to and from work on weekly passes purchased by their employers who use the same passes during the day. Whether this constitutes "free" rides

for domestics for which the employers pay, or whether this constitutes part of the wages paid to the domestics with the employers availing themselves of free rides is a matter entirely irrelevant to this proceeding. The fact remains that in the inequality of the fares and charges paid for transportation there is a discriminatory differential of as much as 25 per cent against a large part of the population which at any one time can command as much as 25 cents but not as much as 50 cents for transportation, and for whom transportation is not furnished by their employers.

The Capital Transit Company also introduced evidence to the effect that a change in the rate, from six tokens for 50 cents to three tokens for 25 cents, would mean a reduction in gross revenue between $192,000 and $250,000 per year. This is calculated on the theory that as tokens become more easily obtainable, the passengers will be more inclined to purchase tokens rather than pay cash fares, thus resulting in the difference claimed. The question also arose as to what effect the change would have on the proportion of weekly passes purchased, that is to say, whether the proportionate number of weekly passes will be lowered so that the loss in revenue incident to a reduction of many fares from 10 cents to $8\frac{1}{3}$ cents will be compensated by fewer passes purchased, thus raising the charge for those rides from 4 cents to $8\frac{1}{3}$ cents. No evidence was furnished by the company in this regard. However, the claim that the relief sought would mean loss of as much as $250,000 accentuates the injustice and unreasonableness of the discrimination. It actually means that this large amount of money is taken from the poorest of the population who do not have as much as 50 cents at any one time available for transportation.

3. The evidence, as has been indicated, falls short of proof that the relief sought would lessen the company's gross revenue. Assuming that a reduction would result, however, the company makes no claim that the reduction would mean that the company would be required to operate at less than a reasonable return. On the contrary, when the Commission sought to introduce evidence showing the income of the company between the time when this rate was established and the present, the company objected on the ground that the case should be determined solely upon the question of discrimination without reference to the reasonableness of its return. It must, therefore, be assumed under any circumstances that the income of the company is sufficient, and that the diminution, if any, in gross revenue will not result in causing the company to operate at less than a reasonable return.

4. The company also argued that this Commission is without authority to fix rates on the basis of the financial standing of the passengers. No attempt is here being made to fix rates on the basis of ability to pay. If the charge were three tokens for 25 cents, the fare would be available to those earning $10,000 per year just as much as to those earning $10 per week. While this Commission cannot set one rate for those in the high income brackets and a different rate for those in the lower income brackets, however, this does not mean that when rates are unequal or discriminatory consideration should not be given to the ques-

tion whether the discrimination results in undue hardship. Therefore, the argument presented by the company has no application.

5. In the disposition of the case, the Commission erred:

(1) In failing to make basic findings of fact supported by the evidence in the record.

(2) In holding that the evidence in the record does not justify a finding that the sale of six tokens for 50 cents constitutes an unjust or unreasonable discrimination.

(3) In failing to find and to hold that the existing rates charged by the Capital Transit Company are discriminatory.

(4) In failing to find that large numbers of persons in low income groups do not have 50 cents at any one time available for payment for transportation, though they may have 25 cents at such times for such purpose.

(5) In failing to find that the discrimination in the existing rates works a hardship on persons in low income groups and are therefore unjustly discriminatory.

(6) In failing to find that there is no justification from the operating or financial standpoint of the Capital Transit Company for refusal to sell tokens at the rate of three for 25 cents.

(7) In failing to hold that the Capital Transit Company has failed to show that the relief sought by the applicants would result in a substantial diminution in the company's gross revenues.

(8) In failing to hold that the diminution, if any, of the company's gross revenue has no relevancy in this proceeding.

(9) In denying the applications.

6. As has been stated, the order denies the applications "without prejudice." At this point a question arises: What does the Commission mean by the phrase "without prejudice?" Evidently this does not mean "without prejudice" to the right of the passengers to purchase tokens at the rate of three for 25 cents. If it means "without prejudice" to the right of passengers to file another application requesting that the rate be three tokens for 25 cents, it may be answered that they have the right to do so anyway. If it means that the order is "without prejudice" to another consideration upon a better record, the Commission has not indicated in what manner the record is defective, or in what manner it might be improved, or what might be regarded as sufficient proof of unjust or unreasonable discrimination. No, there is no meaning in the words "without prejudice."

FEDERAL POWER COMMISSION

Re Olcott Falls Company et al.

[Opinion No. 82, Docket No. IT-5800.]

Public utilities, § 73 — What constitutes under Federal Power Act — Generating company — Interstate connection.

1. A corporation owning a generating plant and, by means of electric lines

and other facilities, transmitting and selling at wholesale electric energy which is transmitted from the state of origin and consumed at points outside thereof by persons other than the transmitter of such energy, is a "public utility" as used in the Federal Power Act, p. 239.

Consolidation, merger, and sale, § 13 — Necessity of authorization — Federal Power Commission.

2. The sale by a public utility (within the meaning of the Federal Power Act) of the whole of its facilities subject to the jurisdiction of the Federal Power Commission is subject to the requirements of § 203 of the Federal Power Act, 16 USCA § 824b, for authorization by that Commission, p. 240.

Consolidation, merger, and sale, § 4.4 — Jurisdiction of Federal Power Commission — Pending application to other Federal Commissions.

3. The Federal Power Commission, in passing upon an application for authority to sell property of an electric company subject to its jurisdiction to another company which has applied to the Securities and Exchange Commission for authorization for the acquisition of such facilities, will confine its consideration and order to the proposed disposition and express no opinion as to the applicability of the provisions of the Holding Company Act pending a decision by the Securities and Exchange Commission, which is charged with the administration of that act, p. 240.

Consolidation, merger, and sale, § 36 — Consistency with public interest — Hydroelectric plant — Operation without Federal license — Agreement to comply.

4. The question of the licensing of a hydroelectric generating project which is operated and maintained without license from the Federal Power Commission, in apparent violation of the Federal Power Act or the River and Harbor Act, is eliminated as an issue in a proceeding to obtain authority for the sale of such property when an application for a license is filed and it is agreed that the Commission has full jurisdiction and authority to require that the project be licensed and that the parties will accept such lawful license as the Commission may authorize to be issued for the project, p. 242.

Consolidation, merger, and sale, § 44 — Conditions of authorization — Assumption of liabilities under Federal acts.

5. The sale of a hydroelectric generating plant and facilities apparently operated and maintained without license from the Commission, in apparent violation of the provisions of the Federal Power Act or the Rivers and Harbor Act, should be subject to the condition that the purchasing company acquire the properties subject to, and assume and become liable for, all liabilities and obligations under the Federal Power Act and the Federal Water Power Act to which the selling company would be subject if it continued to own, operate, or maintain the project, p. 242.

[October 27, 1942.]

APPLICATION *for authority to sell the physical property, franchises, and works of an electric company; granted subject to conditions.*

By the COMMISSION: Olcott Falls Company (hereinafter referred to as

Olcott), a corporation, having its principal business office at Lebanon, New Hampshire, on August 26, 1942, applied for an order, pursuant to § 203 of the Federal Power Act, 16 USCA § 824b, authorizing and approving a proposed sale by Olcott of its physical property, franchises and works or system to Bellows Falls Hydro-Electric Corporation (hereinafter referred to as Bellows), having its principal business office at Bellows Falls, Vermont. Bellows joined in that application to supply information. On October 7, 1942, the application was amended to furnish copies of orders of the New Hampshire Public Service Commission and the Vermont Public Service Commission with relation to the proposed sale and acquisition. On October 21st it was further amended to ask authorization and approval of the purchase of the facilities in question by Bellows if the Commission should determine that it has jurisdiction with respect thereto.

On August 29th the governor and Public Service Commission of each of the states of New Hampshire and Vermont were given written notice of the application, copies being furnished to the Commissions. Notice of the application was also published in the Federal Register on September 1st, stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before September 15, 1942. No protest or petition or request to be heard in opposition to the granting of such application has been received. Both state Commissions have authorized and approved the proposed transaction in so far as they have passed on it

The physical property, franchises, and works or system proposed to be sold (sometimes referred to as "Wilder") consist of a concrete multiple-arch dam, a canal, two adjoining brick power houses containing five horizontal waterwheel generating units with an aggregate capacity of about 5,220 kilowatts (name plate rating), miscellaneous hydraulic equipment, transformers adjacent to the powerhouses for stepping up the voltage from 600 volts to 13 kilovolts and 33 kilovolts, a double circuit 13-kilovolt line about 200 feet long, a double circuit 33-kilovolt line about 750 feet long, and land and water rights. Such lines connect with facilities of Granite State Electric Company and Central Vermont Public Service Company. The facilities of the latter, in turn, connect with those of Bellows. By means of its lines and other facilities Olcott sells all of the electric energy generated to Granite State Electric Company and Bellows. In considering the nature of the use of Olcott's facilities we have also referred to the power system statements of the applicants and interconnected companies, particularly the 1941 Power System Statement (FPC Form No. 64) of the Central Vermont Public Service Corporation.

The proposed sale price is $200,000, payable in cash.

Jurisdiction

[1] Olcott was incorporated by a special act of the legislature of the state of New Hampshire on June 23, 1848, under the name "White River Falls Corporation." By means of the electric lines and other facilities, including transformers, which it owns and operates, between the generating

units in its powerhouses and the connecting points with facilities of Granite State Electric Company and Central Vermont Public Service Company, it transmits and sells at wholesale electric energy which is transmitted from Vermont and consumed at points outside thereof by persons other than the transmitter of such energy. Olcott is, therefore, a "public utility" within the meaning of that term as used in the Federal Power Act.

[2] The properties proposed to be sold by Olcott include the whole of its facilities subject to the jurisdiction of this Commission. The sale of such facilities is subject to the requirements of § 203 of the Federal Power Act for authorization by this Commission.

[3] Bellows has applied to the Securities and Exchange Commission for authorization for the acquisition of such facilities, as distinguished from the disposition thereof by Olcott. Bellows considers such authorization to be required under the Public Utility Holding Company Act of 1935. Unless the acquisition is exempt from the requirements of that act by reason of express authorization thereof by state Commissions, it is exempt from the requirements of § 203 of the Federal Power Act by § 318 of that act, 16 USCA § 825q. The question, in the first instance, is one of the applicability of provisions of the Holding Company Act, and we therefore express no opinion on it pending a decision by the Securities and Exchange Commission which is charged with the administration of that act. Accordingly, we will confine our present consideration and order to the proposed disposition by Olcott.

Consistency with the Public Interest

The application contains the following showing of facts relied upon to establish consistency with the public interest:

"The equitable interest in the Olcott Falls Company is held by International Paper Company, which company is primarily engaged in the production of paper and paper products. Olcott Falls Company's interest in the generation of hydroelectric power at Wilder for sale to others occurred as a result of its abandonment of the manufacture of paper at the Wilder mill, and, until the property could be disposed of, generators were added to the old grinder wheels as a temporary source of revenue. The present sale results in the disposal of utility assets not otherwise a part of the paper business.

"The acquisition by Bellows Falls Hydro-Electric Corporation of these utility assets transfers the ownership thereof to one of the companies now jointly purchasing the output of Wilder, the remaining company (Granite State Electric Company) being an associate company.

"The ultimate value of Wilder can only be realized through redevelopment, and then only, it is believed, by a system having large quantities of steam power available for the purpose of relaying this hydro power. At present, power, not required for local load, from the Bellows Falls development of Bellows Falls Hydro-Electric Corporation is transmitted over 110-kilovolt lines extending from Bellows Falls, Vermont, to Pratts Junction, Massachusetts, where they tie in with the main part of the New England Power system. These 110-kilovolt

lines have sufficient capacity to transmit the combined output of the Bellows Falls plant and of Wilder after redevelopment. The construction of a line between Bellows Falls and Wilder, for which the rights of way have already been largely acquired by Bellows Falls Hydro-Electric Corporation and an associate company, at the time of the redevelopment of Wilder will effect a direct connection with the present facilities of Bellows Falls Hydro-Electric Corporation thereby providing a direct source of additional hydro power for the New England Power integrated system which has large quantities of steam power available for the relaying thereof.

"The power sites on the Connecticut river from its source to the Cabot plant of the Turners Falls Power and Electric Company at Turners Falls, Massachusetts, are largely controlled by New England Power system companies. Wilder is located on the Connecticut river between the McIndoes Falls plant and the Bellows Falls plant and immediately upstream from the undeveloped Hartland Falls site, all of which except Wilder are now part of the New England Power system, and obviously Wilder property fits into this system and should be operated as a part of the same in order to derive the maximum benefit from the river as a whole."

All of the securities of Olcott are shown to be held by trustees for International Paper Company, and as the latter has authorized the sale it may be assumed that the sale is to its interest.

Pending a reclassification of the accounts for the properties in question pursuant to the Commission's accounting requirements and an audit thereof by the Commission, no determination of the original cost of the properties to be sold can be made. The showing made in the application with respect to the original cost of the facilities proposed to be sold is the following general statement:

"The entire outstanding capital stock of Olcott Falls Company was acquired by the former International Paper Company in March, 1899. For reasons unknown, the books of account and the records of Olcott Falls Company were not received at that time. Until July, 1907, the assets of Olcott Falls Company were recorded on the books of account of the former International Paper Company. As of July 1, 1907, books of account were opened for Olcott Falls Company and the properties were recorded at the cost to the former International Paper Company of the stock of Olcott Falls Company, viz., $1,464,617.20, plus amounts spent by the former International Paper Company for additions in the period between March, 1900, and July 1, 1907, amounting to $130,511.39. The properties of Olcott Falls Company were originally constructed, and until 1927 were operated, as a pulp and paper mill in which all the power developed was used. In 1926 the operations of the pulp and paper mill began to decline and in 1927 it was shut down entirely. Subsequently the pulp and paper machinery was removed and the mill buildings demolished, leaving only the power plant in operation. The latter is still operated, but no detailed records are available to reflect the actual cost of the original assets used for the production and transmission of electric energy.

"The total property account on De-

cember 31, 1931, amounted to $2,907,437.50 with a depreciation reserve of $1,668,138.75 leaving a net balance of $1,239,298.75. At the time the pulp and paper mill was demolished the entire depreciation reserve was applied against property account representing, as near as could be estimated, the portions of the property so demolished. Of the balance of $1,239,300, company engineers estimated that $450,000 (of which about $250,000 had actually been expended since 1923) represented the dam, canal, buildings, generating and substation equipment, penstocks, etc. involved in the power development itself and that the remainder of $789,300 represented the original cost of International Paper Company's investment for the lands, rights, etc.

"Since 1931 additional expenditures for generators and flowage rights amounting to $151,697.96 net have been made to the power plant so that now the property account consists of $601,697.96 (partially estimated) representing the power development, that is the dam, canal, buildings, generating and substation equipment, penstocks, etc., and the balance of $768,155.31 representing the original lands, rights, etc. The total $1,369,853.27 represents the balance of original cost of International Paper Company's investment plus additions to the physical property and less retirements (estimated), and includes actual expenditures in excess of $400,000 since 1923 for power development."

In considering the foregoing statement we take into account the fact that the figures on Olcott's books for "land, rights, etc.," may, for all that can be determined on the present record, contain amounts for purported water power rights which are wholly subject to the superior powers of the Federal government over navigable waters of the United States. Based on the 5,220-kilowatt name plate rating of the generating capacity, the figure of $601,697.96 referred to as representing dam, canal, buildings, generating and substation equipment, penstocks, etc., represents $155 per kilowatt of installed capacity. In the usual case this would be regarded as a relatively low investment. Of course, the figures set forth in the statement quoted above do not reflect depreciation, including obsolescence, nor the effect of the contemplated redevelopment on the service life of existing facilities. However, it appears that the project is now in operation and that the purchaser proposes to continue its operation until redevelopment is undertaken. Under these circumstances the sale price does not appear unreasonable.

[4, 5] There might have been some question whether a proposed transfer of facilities under § 203 of the act could be found consistent with the public interest where they include a hydroelectric generating project operated and maintained without license from this Commission in apparent violation of the provisions of the Federal Power Act or the River and Harbor Acts (see order of July 26, 1939, Re New England Power Co. Docket No. IT–5580). The application in that proceeding was set down for hearing on that issue, among others. The hydroelectric generating project which was there involved was that of Bellows, located on the Connecticut river at Bellows Falls, being the next dam

downstream from the one involved in the present application. Although that application was subsequently withdrawn, we later ordered the filing of an application for license for that project (see Opinion No. 60, March 4, 1941, Re Bellows Falls Hydro-Electric Corp. Docket No. IT–5584, 37 PUR(NS) 257). In compliance with that order, such an application was filed, and the issuance of a license has been authorized by this Commission.

Simultaneously with the filing of the present application, the applicants filed an application for a license for the hydroelectric generating project now proposed to be sold (Project No. 1892) and by amendment to that application, on October 21, filed an agreement as follows:

"The applicants admit that the Commission has full jurisdiction and authority under the Federal Power Act to require that the project herein described be licensed and to issue a license therefor, and each of them agrees to accept such lawful license as the Commission may authorize to be issued for such project, but they and each of them reserve their full legal rights as to the scope of the project and as to the property which may be legally and properly included therein and as to the compliance of the license with the provisions of the Federal Power Act."

In view of this action we conclude that the question of the licensing of the hydroelectric generating project is eliminated as an issue in the present proceeding, except as to any liabilities or obligations arising out of the unauthorized construction, operation or maintenance of the project, or any part thereof, to which Olcott may be subject. It appears from page 4 of the Exhibit K–4 to the application that upon consummation of the sale Olcott will be dissolved. It is therefore appropriate to the carrying out of the provisions of the Federal Power Act that the sale be subject to the condition that Bellows acquires the properties subject to, and assumes and becomes liable for, all liabilities and obligations under the Federal Power Act and the Federal Water Power Act to which Olcott would be subject if it continued to own, operate, or maintain the project, and our order will be conditioned accordingly.

We therefore conclude and find that, subject to such condition and to the usual conditions of our orders of authorization and approval, the proposed sale of facilities, in so far as subject to the requirements of § 203 of the Federal Power Act, will be consistent with the public interest.

An order will be entered accordingly.

ORDER

Upon consideration of the joint application in the above-entitled proceeding, as amended, and the record thereon, the Commission having on this date made and entered its findings and opinion (Opinion No. 82, printed herewith), which are hereby referred to and made a part hereof by reference, the Commission *orders* that:

(A) The sale by Olcott Falls Company to Bellows Falls Hydro-Electric Corporation of the physical property, franchises, and works or system of the Olcott Falls Company be and the same hereby are authorized on the terms and conditions set forth in the application as amended and in any event

subject to the terms and conditions hereof.

(B) The sale shall be subject to the condition that Bellows Falls Hydro-Electric Corporation acquires the properties subject to, and assumes and becomes liable for, all liabilities and obligations under the Federal Power Act and the Federal Water Power Act, to which Olcott Falls Company would be subject if it continued to own, operate, or maintain the project.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever which may come before this Commission or before such other regulatory body, and nothing in this order shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) This authorization shall expire unless acted upon within sixty days after the entry of this order.

(E) The applicants shall report with reference to the subject matter hereof as required by the Rules of Practice and Regulations, and shall file proposed journal entries within six months from the date of consummation of the proposed merger as required by provisions of the Commission's Uniform System of Accounts.

WISCONSIN PUBLIC SERVICE COMMISSION

Irma Schroeder et al.

v.

City of Wisconsin Rapids

[2-U-1830.]

Municipal plants, § 9 — Jurisdiction of Commission — Enforcement of laws.

The jurisdiction of the Commission to investigate alleged illegal activities of municipal officers managing and operating municipal electric and water utilities is limited to the neglect or violation of utility statutes which it administers.

[September 8, 1942.]

INVESTIGATION *on complaint of alleged illegal activities of municipal officers operating municipal plants; complaint dismissed for lack of jurisdiction.*

By the COMMISSION: A petition signed by Mrs. Irma Schroeder and 107 other persons was filed with the Commission on March 30, 1942. The pe-

tition stated that the signers were patrons of the Wisconsin Rapids municipally owned waterworks and lighting commission and that they believed "the management of that organization would bear investigating." The petitioners asked such investigation. A notice of investigation was issued on April 9th and known parties informed that hearing would not be scheduled until the petition has been made more specific. The petition was amplified by a letter filed by Mrs. Schroeder on April 13th. Hearing was scheduled by notice of April 23rd.

Hearing: May 20, 1942 at Wisconsin Rapids before Examiner Calmer Browy.

APPEARANCES: Mrs. Irma Schroeder et al., by William J. Conway, Jr., Attorney, Wisconsin Rapids; city of Wisconsin Rapids George Damitz, Reinhard Knuth, Charles Matthews, and Robert J. Kerrins, by Hugh Goggins, Attorney, Wisconsin Rapids; Frank L. Steib, by Marvin S. King, Attorney, Wisconsin Rapids.

Briefs were filed. The record was closed on June 27.

The complainants contend:

1. That Reinhard Knuth, present alderman and present member of the waterworks and lighting commission, George Damitz, former alderman and present waterworks and lighting commissioner, and Charles Matthews, former alderman and former waterworks and lighting commissioner, illegally received pay for services as members of the waterworks and lighting commission in addition to their salary as members of the city council and that § 62.09(2)(b), Statutes, was thereby violated.

2. That George Damitz, previously as alderman and waterworks and lighting commissioner and at present as a waterworks and lighting commissioner, illegally sold insurance to the city and waterworks and lighting commission and that § 62.09(7)(d) was violated.

3. That Charles Matthews, former commissioner and alderman and now an employee of the waterworks and lighting commission, obtained his present job illegally and that there was a violation of §§ 62.09(7)(d) and 348.28 while he was an employee and alderman.

4. That because of the provisions of §§ 66.11(2) and 62.09(2)(d) F. L. Steib, present manager employed by the waterworks and lighting commission, could not properly be appointed manager after resigning from the commission and that there is a conflict of interest because he is a stockholder in the Consolidated Water Power and Paper Company whose affiliate, Consolidated Water Power Company, sells electric energy to the waterworks and lighting commission.

5. That Robert L. Kerrins, present member of the waterworks and lighting commission, is ineligible under § 17.03(5) to hold such office because he was convicted on February 11, 1935, of operating a punch board in his place of business.

Steib contends that his appointment as manager on April 5, 1937, was proper since he had resigned from the waterworks and lighting commission, effective March 20, 1937, and that there is no conflict of interest because of his stockholdings since he holds no stock in the company furnishing electric energy to the municipal utility. He further says that the contract be-

tween the company and the municipal utility was executed for a period of ten years on July 7, 1936, before he became manager, and the city and waterworks and lighting commission and not the manager are the contracting parties in behalf of the municipal utility.

Knuth, Damitz, and Matthews contend that the Commission has no jurisdiction in the matter because no utility statutes are in issue. They do not dispute that they received pay both for their work as aldermen and as members of the waterworks and lighting commission. Damitz testified that some insurance business from the waterworks and lighting commission was received through equal division of the insurance among the insurance agents in the city; that other insurance business from the municipal utility resulted from his being lowest on competitive bids; and that other insurance business from the municipal utility went to his wife, Hattie, as an independent insurance agent. Under cross-examination Damitz conceded that he and his wife shared in the premium.

Testimony by the city clerk and city treasurer showed that Matthews was alderman from April, 1934, to November 7, 1939; was a member of the waterworks and lighting commission from October 1, 1935, to October 2, 1939; and that he was employed at a salary of $100 a month by the waterworks and lighting commission, starting October 12, 1939.

No good purpose will be served by summarizing the testimony in detail. Suffice it that Knuth from October, 1941, through April, 1942, received $45, as a council member and $58 as a member of the waterworks and lighting commission; that Damitz from April 7, 1937, to May 1, 1940, received $232 as a council member and $248 as a member of the waterworks and lighting commission; that Matthews from October, 1935, to November, 1939, received $284 as a council member and $193.52 as a commission member; that Damitz received $648.24 from the city in 1942 as premium on a motor vehicle fleet policy, including vehicles of the municipal utilities, $195.53 as premiums on public liability, fire and tornado, and employee fidelity insurance from the waterworks and lighting commission, in 1941 received total premiums of $366.32 on similar insurance from the waterworks and lighting commission, and in earlier years received premiums on insurance sold; and that it was stipulated that Kerrins had been convicted of violating § 348.07, Statutes, by operation of a punch board. Other essential facts of record have already been set forth.

We are satisfied that we have jurisdiction to investigate the matters stated in this complaint in so far as they involve the management and operation of the Wisconsin Rapids municipal electric and water utilities. Section 195.07, Statutes, makes it our duty to "inquire into the neglect or violation of the laws of this state by railroads and public utilities (as defined in Chaps. 195 and 196), or by the officers, agents, or employees thereof, or by persons operating railroads or public utilities." Under such section it is our power and duty "to enforce all laws relating to railroads or public utilities, and report all violations thereof to the attorney general." The definition of public utility in § 196.01 in-

cludes towns, villages, and cities producing, transmitting, delivering, or furnishing heat, light, water, or power either directly or indirectly to or for the public. There is no contention here that the city of Wisconsin Rapids is not a public utility in both the water and electric fields. Under § 196.02 we have broad powers to supervise and regulate public utilities. Paragraph (4)(a) of such section makes it our duty "to inquire into the management of the business of all public utilities." These statutes do not give us any power to determine judicially whether laws have been violated or to prescribe penalties but such statutes do give us the power and make it our duty to investigate any complaint of alleged violation and to ascertain whether such violation has occurred. If there has been violation, we are required to report the same to the attorney general. It should be noted that § 195.07 makes it our duty to inquire into the neglect or violation of "the laws of this state," to enforce "all laws relating to railroads or public utilities," and to report all violations thereof to the attorney general.

At first blush such language would appear to distinguish between our duties of inquiry and our duties of enforcement by providing that we inquire into the neglect or violation of all Wisconsin statutes but enforce only laws relating to railroads or public utilities. An examination into the history of the statute and a study of a decision by our supreme court interpreting this section convince us otherwise. The evolution of the statute from 1876 on indicates an intention by the legislature to vest the Commission and predecessor agencies with powers of inquiry into violations of only statutes administered by the Commission. In 1913 § 195.07(1) was in essentially its present form with the exception that by amendment in 1925 the phrase "or public utilities" was inserted after the word "railroads" wherever the word appeared. The effect of such amendment was to give the Commission the same powers under the statute concerning public utilities as it previously held concerning railroads.

In Chicago & N. W. R. Co. v. Railroad Commission, 162 Wis 91, PUR 1916C 595, 596, 597, 155 NW 941, the supreme court interpreted the statute as it was in 1913. Pointing out that the circuit court had held, in effect, that the general words in the statute covered not only all laws relative to railroads in force, but also all laws relating to railroads which might ever afterwards be enacted, the supreme court stated:

"This is quite an ambitious program for an administrative tribunal without legislative or judicial power within the historical and legal meaning of the words 'judicial and legislative.' . . .

"The enforcement of laws, in the sense of ascertaining their meaning and application to the case in hand and pronouncing judgment therein, is a judicial function; the making of laws which are of a higher grade than mere regulations, rules, or bylaws, or administrative aids to the more general provisions of statute, is a strictly legislative function. It is no impeachment of the rule that all the words of a statute should be given effect whenever possible, to give such words effect according to recognized legal rules. These rules require us, when

we find in a statute words relating to a particular or specific subject followed by general words, to restrain these general words to persons or subjects of the same genus or family to which the particular persons or subjects belong."

From this decision we think it follows that the phrase "neglect or violation of the laws of this state by railroads and public utilities" is limited in scope to those laws of this state "relating to railroads or public utilities." Any other interpretation of the statute would require the Commission to perform duties and functions which by law have been vested in the courts and their officers. This Commission is like a special committee of the legislature to which is referred matters requiring expert and technical knowledge in the fields of utilities, water power, and rail and motor transportation. It seems unlikely that the legislature would refer to such committee matters completely outside its expert knowledge as would be the case if the Commission were to inquire into neglect or violation of any or all laws of the state by officials or agents of railroads or utilities. It is our conclusion that our duties of inquiry are limited to the neglect or violation by railroads or utilities of railroad and utility statutes which we administer.

In view of the conclusion reached, we make no findings as to violations, if any, of statutes other than are included in the public utility law administered by us. As to the matters raised by the contentions of the complainants as summarized herein we will find that there was no neglect or violation of any public utility statute.

The complainants in effect ask that we institute quo warranto proceedings. Such matters are for the courts. If the city of Wisconsin Rapids or any of its citizens believe that laws of the state have been violated, the city or its citizens have ample remedies in court for such situation. Complainants have raised no question in this proceeding as to the reasonableness of the allegedly illegal payments as operating expenses of the municipal utilities. When and if such contentions are raised, we will make findings with respect thereto under the provisions of the utility law.

The Commission finds:

1. That the city of Wisconsin Rapids as a public electric and water utility and its officers, agents, or employees have not violated the public utility law by performing the acts complained of herein.

2. That this Commission is without jurisdiction to make inquiry into or findings concerning alleged violations of other laws of the state.

ORDER

It is therefore *ordered:* That the complaint herein be and hereby is dismissed for lack of jurisdiction.

CALIFORNIA DISTRICT COURT OF APPEAL, FOURTH DISTRICT

F. A. Graham Gillies et al.

v.

La Mesa, Lemon Grove & Spring Valley Irrigation District et al.

[Civ 2873.]

(— Cal App(2d) —, 129 P(2d) 941.)

Rates, § 217 — Contracts — Effect of Commission action.

1. A landowner is not entitled to a mandatory injunction requiring an irrigation district to deliver water to his land at a contract price after the Commission has ordered the establishment of higher rates, p. 251.

Contracts, § 19 — Damages for violation — Effect of Commission rate order.

2. Violation of the terms of a contract fixing rates for water service can furnish no grounds for an action for damages when the rates fixed by the contract have been superseded by rates established by the Commission, p. 252.

Judgment, § 1 — Declaratory relief — Contract rate superseded by order.

3. A customer is not entitled to declaratory relief by way of a determination of rights under a contract fixing rates for service when the rates so fixed have been superseded by orders of the Commission, p. 253.

[October 6, 1942.]

APPEAL *from judgment sustaining demurrer to complaint in action for injunction, declaratory relief, and damages for breach of a contract fixing rates; affirmed.*

APPEARANCES: Ward & Ward and Jesse George, all of San Diego, for appellants; W. H. Jennings, of La Mesa, for respondents.

MARKS, J.: This is an action for an injunction, declaratory relief, and damages for breach of contract. A demurrer to the complaint was sustained without leave to amend. This is an appeal taken from the judgment.

Plaintiffs are owners of land riparian to the San Diego river. The La Mesa, Lemon Grove, and Spring Valley Irrigation District (hereinafter called the district) is an irrigation district organized under the California Irrigation District Act, approved March 31, 1897, Stats. 1897, p. 254, as amended. The individual defendants are the directors of the district.

The complaint contains three counts. The first count seeks a man-

datory injunction requiring the district to furnish and deliver to plaintiffs, on their lands, 3 miner's inches of water at an annual price and charge of $60 for each miner's inch. The second cause of action seeks damages for violation of contract to furnish and deliver the water at that price. The third cause of action is for declaratory relief. The allegations of the first cause of action are incorporated in the other causes of action by reference. We will therefore examine the allegations of the first cause of action in some detail.

It is alleged that F. A. Graham Gillies and J. T. Gillies (hereinafter referred to as Gillies Brothers) owned described land in El Cajon valley in San Diego county; that Fred N. Patterson also owned described land in the same valley; that both tracts of land are outside of the boundaries of the district.

That there is attached and is appurtenant to the lands of Gillies Brothers 2 inches continuous flow of the waters of the San Diego river, and to the lands of Patterson one inch of that flow; that the district is obligated by contract to transport that water to the lands of plaintiffs for the consideration already mentioned.

That the San Diego river is an unnavigable stream about 55 miles long from its source to its mouth at the Pacific ocean; that the city by reason of succession has the prior right to the flow of the river necessary for its municipal purposes; that if the waters of the river are properly developed, impounded, and conserved the average annual flow of the river is "far in excess of the amount of water necessary to meet the present and reasonably future demands and needs of the said city of San Diego."

It is alleged that plaintiffs' water rights found their source in W. E. Robinson and his associates who, in 1885, filed on and appropriated approximately 21,000 miner's inches of the flow of the San Diego river, to be used on approximately 25,000 acres of the El Cajon Rancho in the El Cajon valley; that in the same year Robinson and his associates entered into a contract with Henry B. Lockwood and his associates (the parties being the owners of the greater part of the 25,000 acres already mentioned and also the lands of the Ex Mission Rancho) whereby Robinson and his associates bound themselves to the other land owners to build, construct, and operate in perpetuity the necessary dams, aqueducts, and pipe lines to impound the waters and bring them on the lands in El Cajon valley, including the lands of plaintiffs; that this contract was duly recorded; that the parties to that contract organized the San Diego Flume Company (hereafter called the Flume Company); that in 1886, Robinson and his associates assigned their rights to the Flume Company which assumed their obligations under the contract; that in 1889, the Flume Company completed and put into operation a system capable of delivering to the lands in El Cajon valley, including the lands of plaintiffs, 5,000 miner's inches of water; that the Flume Company sold and conveyed to the owners of land in the El Cajon valley and Ex Mission Rancho, including the predecessors in ownership of plaintiffs, various specified quantities of water which were attached to and made appurtenant to the various described parcels of land and

which were to be delivered on those lands for the price of $60 per inch per year, payable in semiannual instalments of $30 each; that this contract was duly recorded; that plaintiffs' water rights passed to them by mesne conveyance under this contract; that in 1910 the Flume Company sold all of its rights to James A. Murray and his associates, copartners doing business under the name of Cuyamaca Water Company, who assumed the obligations of the Flume Company under its contract; that in June, 1925, the Railroad Commission of the state authorized the Cuyamaca Water Company to sell the water system and plant and the major portion of its utility properties to the district upon the condition that the district would continue to serve an adequate supply of water in quantities to which they were entitled at the date of sale, to consumers of the Cuyamaca Water Company, whose properties were outside of the boundaries of the district; that conveyances were made upon the conditions imposed by the Railroad Commission; that the district has recognized its obligation to furnish water to plaintiffs but has refused to furnish water in the amounts and at the rates provided in the contract of the Flume Company to the irreparable damage of the plaintiffs.

It is also alleged that the Cuyamaca Water Company, shortly after its purchase from the Flume Company, became a public utility subject to the jurisdiction of the Railroad Commission, which assumed jurisdiction over it and fixed rates and charges higher than those established in the contract of the property owners with the Flume Company "against the protest and objection of the said Fred N. Patterson and the predecessors in ownership of Gillies Brothers, plaintiffs herein."

In addition to the foregoing allegations, damages to Gillies Brothers in the sum of $52,000 and to Fred N. Patterson in the sum of $14,000 are alleged in the second cause of action, the damages being predicated on the breach of the Flume Company contract.

The third cause of action seeks declaratory relief in the controversy over the alleged obligations contained in the Flume Company contract.

A more complete statement of the facts, and reference to various proceedings before the Railroad Commission, may be found in the case of Brewer v. Railroad Commission (1922) 190 Cal 60, PUR1923B 218, 210 Pac 511, involving the same contract that is now before us.

[1] It is clear that the principal question for decision is this: The plaintiffs having alleged in their complaint that the Cuyamaca Water Company was a public utility under the rate-fixing jurisdiction of the Railroad Commission, which assumed jurisdiction and fixed rates in excess of those specified in the Flume Company contract against the protest and objection of Patterson and the predecessors in interest of Gillies Brothers, and the district having succeeded to the interest of the Flume Company under the jurisdiction of the Railroad Commission, can the plaintiffs rely on the provisions of the Flume Company contract as against the higher rates established by the Railroad Commission?

This very question was answered in the negative in Brewer v. Railroad

Commission, *supra,* 190 Cal at p. 85. The plaintiffs or their predecessors in interest may not have been parties to the Brewer Case, still they have alleged that the Cuyamaca Water Company, the predecessor of the district, was a public utility under the jurisdiction of the Railroad Commission which fixed rates in derogation of those fixed in the Flume Company contract over their protest and objection or the protest and objection of their predecessors in interest. These allegations bring the case within the principle upon which the decision in Brewer v. Railroad Commission, *supra,* is based, and plaintiffs may not now rely upon the Flume Company contract as against the higher rates fixed and established by the order of the Railroad Commission. They cannot attack the formal order of the Commission in this manner in the superior court.

A case factually similar to the instant case is Wallace Ranch Water Co. v. Foothill Ditch Co. (1935) 5 Cal (2d) 103, 121, 53 P(2d) 929, 938. There the plaintiff had a contract for conveyance of its waters through the system owned and operated by the defendant, a public utility, at a price much less than the rates subsequently fixed by the Commission. In holding that the plaintiff could not attempt, in an action in the superior court, to enforce the provisions of its contract as against the rates established by the Commission, the supreme court said: "Assuming that the plaintiff is correct and that this court cannot take judicial notice of the 1929 order above referred to, it still affirmatively appears from the record that the Commission, with full knowledge of the claimed rights of plaintiff, has made at least two orders fixing rates for the service rendered plaintiff by defendant. It does not appear that these orders are void on the face thereof. Under such circumstances, the trial court had no jurisdiction directly or indirectly to overrule an order of the Railroad Commission. The power to reverse, review, correct, or annul orders of that Commission rests solely in the supreme court (§ 67 of the Public Utilities Act, *supra* [Stats. 1915, pp. 115, 161, as amended, Stats. 1933, p. 1157]) and the superior court is without jurisdiction in the premises. Pacific Teleph. & Teleg. Co. v. Eshleman (1913) 166 Cal 640, 137 Pac 1119, 50 LRA(NS) 652, Ann Cas 1915C 822; Truck Owners & Shippers v. Superior Court (1924) 194 Cal 146, 228 Pac 19; Allen v. Railroad Commission (1918) 179 Cal 68, PUR1919A 398, 175 Pac 466, 8 ALR 249; People v. Hadley, 66 Cal App 370, PUR1924E 820, 226 Pac 836."

It follows that the first cause of action, which attempts, in an action in the superior court, to enforce the provisions of the Flume Company contract as against the subsequent orders of the Railroad Commission and thereby to nullify its orders, fails to state a cause of action.

[2] The action for damages was based on a violation of the terms of the Flume Company contract which had been superseded by the rates established by the Commission. As the rates established in the contract cannot be enforced between the parties it follows that violation of the terms of that contract can furnish no ground for an action for damages.

The question presented under the third cause of action seeking declaratory relief is somewhat different but we believe its answer is equally simple.

[3] An action for declaratory relief lies when there is an actual bona fide dispute between the parties as to a legal obligation arising under the circumstances specified in § 1060 of the Code of Civil Procedure. There must not only be a dispute between the parties but that controversy must be judicable. The plaintiffs must show that the dispute presents a question to which there is more than one answer. When the complaint alleges no facts showing an enforceable contractual right in the plaintiffs, and only a judgment for defendants can be entered, there is no judicable dispute and the action will not lie. Merkley v. Merkley (1939) 12 Cal(2d) 543, 86 P(2d) 89.

We have such a situation here. Plaintiffs base their claim to this relief on a contract that has been superseded by orders of the Railroad Commission. They have brought their action in a court that can grant them no relief. The third cause of action in seeking a determination of rights under a contract that has been superseded by orders of the Railroad Commission, fails to allege facts sufficient to state a cause of action for declaratory relief.

The judgment is affirmed.

Barnard, P. J., and Griffin, J., concurred.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Harold E. Boice

[Application Docket No. 61392.]

Principal and agent — What constitutes relationship — Arrangement for motor carrier service.

1. One who has an arrangement with several motor carriers whereby he refers customers to them and receives as compensation a specified percentage of gross charges paid them by the shippers is not an agent of the carriers when he has no authority delegated to him by the carriers to act, contract, obligate, or in any way alter the legal relations between the carriers and third persons and between the carriers and himself, p. 254.

Employees — What constitutes — Arrangement as to motor carriers.

2. One who has an arrangement with several motor carriers whereby he refers customers to them and receives from the carriers as compensation a percentage of the gross charges paid them by the shipper is not an employee, p. 254.

Motor carriers, § 28 — Status as broker.

3. One who has an arrangement with several motor carriers whereby he refers customers to them and receives as compensation a specified percentage of gross charges paid by shippers is a person, other than a bona fide employee or agent, who provides or manages for the transportation of property and, consequently, is a broker within the definition of that term in Art. 1, § 2(2) of the Public Utility Act, 66 PS § 1102, p. 254.

(SIGGINS, JR., Chairman, and BEAMISH, Commissioner, dissent.)

[October 5, 1942.]

APPLICATION *for brokerage license under provision of Public Utility Act relating to brokers dealing with motor carriage; application granted.*

By the COMMISSION: On April 13, 1942, Harold E. Boice made application to the Commission for a brokerage license evidencing the Commission's approval of the beginning of the right and privilege to sell or offer for sale, furnish, provide, or arrange for the transportation of property, including household goods in use by motor vehicle as a broker without assuming the custody as a motor carrier for the transportation of property between points in the city of Williamsport and vice versa.

[1–3] Hearing upon the application was held in Williamsport on June 16, 1942. It appears that, among other vocations, applicant has an arrangement with several motor carriers whereby he refers customers to them and receives from the carrier as compensation a specified percentage of the gross charges paid them by the shippers.

Applicant, the sole witness, testified that he does not advertise or solicit transportation business, but has a wide acquaintance who call upon him intermittently for advice concerning the shipment of property. He, therefore, made arrangements with several certificated intrastate and interstate motor carriers to refer business to them on a commission basis. It appears that when a shipper explains his requirements (to the applicant), the applicant suggests a carrier, often arranging with the carrier for the pick-up and delivery of the property, but does nothing further than to bring the parties together and collect his commission from the carrier. He possesses no powers to bind or obligate either the carrier or the shipper. The final contract always is made directly between the carrier and the shipper and the charges for the transportation service are always paid directly by the shipper to the carrier. He also stated that all compensation paid him for referred business was on a commission basis thereby eliminating any possibility that he may be a salaried employee with regard to the business he refers to said carriers.

Counsel for protestants requested a continued hearing if the Commission should hold applicant comes within

exception, Order 29, to wit: agent or employee—to enable cross-examination of applicant and introduction of testimony. Applicant objected to a continued hearing.

Article 1, § 2, (2) of the Pennsylvania Public Utility Law, defines "broker" as meaning any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a "carrier."

Thus if applicant is either an agent or bona fide employee of the carriers he represents, he does not come within the meaning of the word "broker" and does not come within the jurisdiction of this Commission.

From the recitation of the facts in this case, *supra,* it is clear that the essential elements of agency are totally lacking in the relationship which exists between the applicant and each of the carriers that he deals with. The applicant has no authority of powers delegated to him by the carriers involved to act, contract, obligate or in any way alter the legal relations between said carriers and third persons and between said carriers and himself. The fiduciary relationship of principal and agent is likewise absent and finally the carriers have no control over the applicant indicative of the relationship of principal and agent. In McCullough v. Railway Mail Asso. (1907) 33 Pa CC 529, 535, Judge Thomas discussing "agency" said:

"The very definition of the term 'agent' implies the doing of business for a principal. 'Agent' is defined by Bouvier to be 'one who undertakes to transact some business, or manage some affair, for another, by authority and on account of the latter, and to render an account of it.' "

Having decided the applicant is not an agent, there remains the question whether or not he may be exempt as a bona fide employee. In Words and Phrases Permanent Edition, Vol. 14, p. 363, "agent" is distinguished from "servant" or "employee" as follows:

"An 'agent' in the restricted and proper sense is a representative of his principal in business or contractual relations with third persons; while a 'servant' or 'employee' is one engaged, not in creating contractual obligations, but in rendering service, chiefly with reference to things but sometimes with reference to persons when no contractual obligation is to result. State ex rel. Key v. Bond (1923) 94 W Va 255, 118 SE 276, 279."

Since applicant's efforts do contemplate a contract to result between shipper and carrier it is obvious that he is not exempt from Commission jurisdiction as an employee.

In Keys v. Johnson (1871) 68 Pa 42, Justice Sharswood said:

"Brokers are persons whose business it is to bring buyer and seller together. They need have nothing to do with the negotiation of the bargain."

From the above principles of law, it is evident that applicant is a person other than a bona fide employee or agent, who provides or manages for the transportation of property and, consequently, is a broker within the definition of that term in Art. 1, § 2 (2) of the Public Utility Act.

Accordingly, we believe this Commission has jurisdiction over the type of business conducted by Harold E. Boice. We will, therefore, approve his application for a brokerage license under § 806 of the Public Utility Law; therefore,

Now, to wit, October 5, 1942, it is *ordered:* That upon compliance with all requirements of § 806 of the Public Utility Law, and with the rules and regulations promulgated by the Commission thereunder, a brokerage license issue evidencing the Commission's approval of the beginning of the right and privilege to sell or offer for sale, furnish, provide, or arrange for the transportation of property, including household goods in use by motor vehicle as a broker without assuming the custody as a motor carrier for the transportation of property between points in the city of Williamsport and from points in said city to points in Pennsylvania; and subject to the following condition:

That the brokerage licensee shall comply with all the provisions of the Public Utility Law as now existing or as may hereafter be amended, and Revised General Order, No. 29, effective July 1, 1939, or as may hereafter be revised, and any other rules and regulations as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke, or rescind the rights and privileges conferred by the license.

The Chairman and Commissioner Beamish voted in the negative.

THE THREE R's OF KUHLMAN DISTRIBUTION TRANSFORMERS

RUGGED Because of their rugged construction throughout, Kuhlman Distribution Transformers stand up on the job with a minimum of maintenance. Insulation, bushings, tanks, lifting lugs and all component parts are of extra strength to insure uninterrupted, trouble-free performance year after year.

RELIABLE For more than forty-five years Kuhlman has been successfully designing and building good Distribution Transformers. Records of their performance on the job give ample evidence of their reliability under any and all conditions. For reliability it pays to operate Kuhlman Transformers.

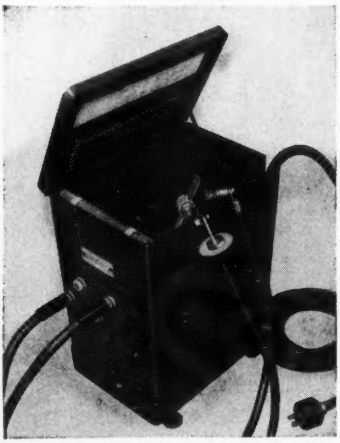
Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

"Fuse-Bond" Process Prepares Surfaces for Metallizing Electrically

Metallizing Engineering Co., Inc., announces a new Fuse-Bond process, and equipment for its application, whereby machine components and similar metal parts may be prepared for



Metco "Fuse-Bond" Unit—Type C

metallizing electrically. Main advantage claimed for the process is that it affords an adequate bond on the hardest surfaces, heretofore impossible or impractical to prepare by blasting or rough threading. It also simplifies preparation of narrow edges, flat areas, and cylindrical parts having keyways, and other interruptions in their surfaces.

Application of the process is with the Metco Fuse-Bond unit. Operating on any 110 or 220 volt, single-phase power line, this equipment fuses a rough deposit of electrode metal into the surface to be metallized. Electrodes are applied to the work with a special holder which uses up to six electrodes at a time, depending on the size and nature of the part to be prepared. Small parts may be prepared with this equipment as easily as large shafts.

The Fuse-Bond unit is contained in a cabinet measuring only 24 in. high and weighs but 170 lbs. Further information is contained in bulletin 44, obtainable from the manufacturer, Long Island City, N. Y.

Electric Fan Design Improved for Navy

A new 12-in. direct-current fan developed for the Navy by Westinghouse Electric & Mfg. Co. uses 34 per cent less steel, 30 per cent less copper, 80 per cent less brass, and only 50 per cent of the nickel alloy resistance wire required for previous models. The motor speed has been increased from 1040 to 1650 rpm and the new fan weighs only 8⅝ pounds.

Half-Cycle Electronic Spot Welding Control

A new electronic half-cycle, synchronous control for the precise operation of resistance-welding machines has been announced by the General Electric Company. Mounted in a protecting cabinet, the control is furnished in two types: the CR7503-A136, which also includes a welding transformer and is designed for bench mounting, and the CR7503-A133, which is without a transformer and is designed for wall mounting. Both types can be used either with tongs or with a suitable bench welder.

The control features a new tube, the easily replaced GL-415; a new circuit which makes higher-speed welding possible; and a simplified initiating circuit which improves performance and reduces maintenance. The new design also incorporates heat control by the phase-shift method. The heat adjustment is made by a dial mounted on the front of the cabinet.

"Colorthru"

"Colorthru," a new product that is a finish coat in color for masonry, is announced by Colorthru of 20 West 45th St., New York City. No priming or undercoat is needed. According to the announcement, one coat brushed or sprayed on floors and walls penetrates, waterproofs, preserves, and beautifies concrete, brick, stucco, cement, etc., whether inside or outside, painted or unpainted, and can be applied to old or new masonry even when wet.

One gallon covers 400 sq. ft. and the cost of $5.35 per gallon includes the primer and paint which is all embodied in one, and ready mixed for immediate use.

New Cartridge for Respirator

The American Optical Company of Southbridge, Mass., announces a new air-filtering cartridge for its R-1000 respirator. The new type AD cartridge protects lungs against a combination of all types of dusts, including toxic, pneumoconiosis-producing, and nuisance dusts.

The face-piece of the AO R-1000 respirator

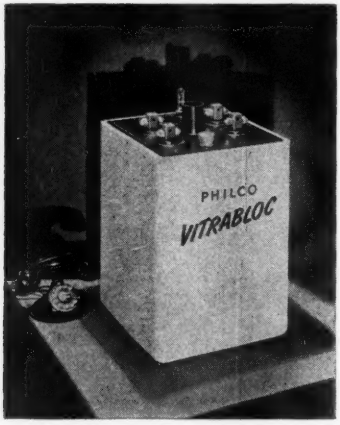
Equipment Notes (Cont'd)

contains a compartment into which a cartridge can be inserted, seven of which have now been designed for interchangeable protection against common respiratory hazards faced by industrial workers.

High Capacity . . . Low Priority Feature Philco's New Vitrabloc Battery

A new line of "Vitrabloc" batteries is announced by the Storage Battery Division of Philco Corporation.

In the new Vitrabloc jar, rubber has been replaced by a vitrified ceramic composed entirely of non-critical materials. As a result, reasonable deliveries of Vitrabloc batteries can now be made on an A-3 priority.



Ceramic Battery Jar

The Vitrabloc line offers the same capacities and virtually all advantages of the rubber jar battery developed by Philco about three years ago for telephone and stand-by use. Moreover, it offers many extra advantages of its own—to the extent that Vitrabloc is considered, not as a substitute, but as a permanent improvement to the Philco line.

Vitrabloc has a highly glazed surface inside and out. This glazed surface is actually fused into the jar. Like glass, Vitrabloc doesn't absorb moisture, nor will acid penetrate or affect it. Pure white in color, Vitrabloc jar gives high light reflection to brighten dark battery rooms. Because of its glassy surface and spray-proof funnel vents, the jar can be kept clean with very little attention. Vitrabloc is explosion-proof and can be set up next to other electrical equipment.

Plastic Marking Plate

Durashield, a new laminated plastic is being offered as a satisfactory substitute for brass, copper, or bronze nameplates, tool checks, dial faces and similar marking plates on motors and metal equipment of every kind, by Plastic Fabricators, Inc., San Francisco, Cal.

Durashield is produced by a lamination process and meets minimum Navy specifications. The center sheet upon which the wording is printed is an opaque cellulose acetate plastic, .010" thick. On each side of this is laminated a transparent acetate plastic, .020" thick, making a finished product measuring .050" thick. The transparent outside allows a clear vision of the directions, name, or whatever may be printed on the center and being laminated in a solid plate resists wear and remains a solid unit which successfully replaces the familiar brass, bronze, or copper plates heretofore used.

The new product can be die-cut, stamped, drilled, or otherwise made to conform to any specification as to size and shape. It is fire resistant, successfully withstanding temperatures of 200°F. It can be obtained in colors, thus conforming in many cases to well-established and familiar trade marks heretofore reproduced in metal.

Catalogs and Bulletins

Myers Centrifugal Pumps

Myers centrifugal pump catalog (CT 42) published by The F. E. Myers & Bro. Co., Ashland, Ohio, covers horizontal, single stage, single suction with closed or open impeller types centrifugals. Also included are descriptions of Myers sump pumps or cellar drainers and condensate units and hot water pumps. Myers horizontal single suction, single stage centrifugal pumps are available in capacities from 20 to 800 g.p.m. and for operation against heads up to 120 feet. Applications for which they are suitable include drainage, circulation of hot or cold water or brine, handling acids, chemicals or oils, booster pumps, and pumping out excavations and many other services.

"Timely Wartime Tips on Fluorescent Maintenance"

How to properly care for your fluorescent installation—and get maximum lighting service from it—is the subject of a new booklet just published by the Lighting Division of Sylvania Electric Products Inc., titled "Timely Wartime Tips on Fluorescent Maintenance."

The booklet outlines the setting up of a regular maintenance routine—tells how to determine the frequency of a regular cleaning schedule—how to figure the number of lamp replacements per month.

A copy of this pocket-size, ready reference booklet may be secured by writing Sylvania Electric Products, Inc., Lighting Division, Salem, Mass.

Viking Catalog

A 44-page catalog (42-G) describes the complete line of Viking rotary pumps manufactured by the Viking Pump Company, Cedar Falls, Iowa.

The extremely wide range of sizes and styles all with the same "gear within a gear" principle, gives them a broad application as their capacities range from one-half to 1,050 g.p.m.

Catalogs & Bulletins (Cont'd)

Centrifugal Pumps

A well illustrated 8-page bulletin on centrifugal pumps has been issued by the Allis-Chalmers Manufacturing Company.

The catalog describes centrifugal pumps for every purpose. Sizes range from 10 to 200,000 g.p.m. and heads from 10 to 4,200 feet. Types range from small machine-tool coolant units to huge 72-inch sewage pumps.

Standard Symbols for Communication Drawings Approved

The American Standards Association recently approved a revision of tentative standards for electrical symbols for use on communication drawings. Most of the basic principles incorporated in the symbols in the tentative standards, however, are still in use in the new symbols. One of the important reasons for the present revision was to bring together the material in the communication field and to coördinate it with the standardization of symbols being carried on in other fields.

Blackmer Rotary Pumps

A file folder containing bulletins describing Blackmer rotary pumps has been issued by the Blackmer Pump Co., Grand Rapids, Mich.

The power pumps have capacities up to 700 g.p.m. with pressures up to 300 lbs. psi. Various drives may be used including direct-connected single and double reduction gears, belt and steam turbine.

The hand pumps range in capacities from 7 to 25 g.p.m. Complete units are offered for fuel and other liquid transfer from barrel or tanks.

Three Bulletins on SR-4 Strain Gages

Three new technical bulletins, one describing the company's SR-4 Strain Gage and the other two, the recording and indicating instruments for use with SR-4 Strain Gages, have been issued by the Baldwin Southwark Division of The Baldwin Locomotive Works, Philadelphia.

The bulletin on the SR-4 Strain Gage which describes an entirely new and revolutionary method for determining stresses in structures and machines, gives detailed descriptions of the three standard gages, their application in measuring and recording dynamic and semi-dynamic strains, and instructions for installing the gages on structures to be analyzed.

Contained in the two other technical bulletins, the SR-4 Strain Recorder and the SR-4 Portable Strain Indicator, are detailed descriptions of the two instruments, and installation operating information for their use with SR-Strain Gages.

Electronics—A New Science For a New World

"Electronics—A New Science for a New World," a colorful 32-page pictorial booklet issued by General Electric, presents the general story of electronics—its past, its present, and its great possibilities for the future.

The booklet tells of how the electron is working today in war combat to perform many marvelous functions; in research to reveal more of nature's mysteries; in industry to step up production, increase human efficiency, and reduce material waste; in radio and television to extend the range and quality of sound and sight over the air waves; in agriculture to improve quantity and quality; and in medicine to reveal more and more of the structure and behavior of the human body.

A copy of the new booklet may be obtained from the manufacturer, Schenectady, N. Y.

"De-ion Circuit" Breakers

For lighting, distribution and power circuits up to 600 amperes, the complete line of Nofuze "De-ion" Circuit Breakers is described in a new 40-page booklet (DD-29-060) by Westinghouse Elec. & Mfg. Co., East Pittsburgh, Pa.

"De-ion" breakers are available for panelboards, switchboards, built-in applications, individual mountings, and separate enclosures. In this booklet principles of the "De-ion" arc quenching action are explained, and quick facts are given on design and operation of each breaker.

Special attachments are described, including the shunt trip, undervoltage release, auxiliary switches, and bell-alarm switches. The booklet explains how to select the "De-ion" circuit breaker best-suited for the application, and diagrams are included with exact dimensions of each breaker.

A copy of the booklet may be secured from the manufacturer, department 7-N-20.

Centrifugal Pumps

A series of bulletins issued by the Gardner-Denver Company, Quincy, Ill., describe their various types of centrifugal pumps.

Side suction centrifugal pumps are described in bulletins A-5, A-7 and A-8. These side suction pumps are designed especially for general utility service conditions. Capacities up to 450 g.p.m. can be handled at heads up to 100 ft.

Horizontal split case centrifugal pumps, types D, E, F, G, and GA are described in bulletin A-105. These pumps are single stage designed for heads up to 300 ft. and in some special cases higher heads.

Close coupled centrifugals are shown in bulletin A-202 (second edition).

"The Safety Clipper"

American Optical Company of Southbridge, Mass., announces a new publication—*The Safety Clipper*—for use by editors of employee newspapers or magazines in promoting industrial safety. First issue has just been published, and editors are invited to send their names and addresses to the optical concern for addition to its mailing list.

Catalogs & Bulletins (Cont'd)

Industrial Pumps

Pomona industrial pumps and the many diversified duties which they perform are described in a 24-page brochure issued by the Pomona Pump Company, Pomona, Cal.

Applications in the utility field (electric, gas, and telephone companies) include the following: circulating oil for cooling transformers, handling condensed water in gas holders, handling ammonia liquor from gas plant, cooling tower pumps, condensate and hot well pumps, dewatering manholes, water supply in isolated stations, and drainage service.

Manufacturers' Notes

Army-Navy "E" Presented to Another Westinghouse Plant

Brigadier General A. G. Gillespie, commanding officer of Watervliet Arsenal, Watervliet, N. Y., recently made the award of the Army-Navy "E" pennant for excellence in war production to the East Springfield, Mass., plant of the Westinghouse Electric & Mfg. Company. This is the eighth such award to be won by the Westinghouse company according to W. O. Lippman, works manager.

Formerly devoted to the production of refrigerators, vacuum cleaners, and other electrical appliances, the East Springfield plant now is engaged in manufacture of equipment for tanks, airplanes, anti-aircraft guns, combat and cargo vessels, and refrigeration apparatus for war-essential industrial processes.

G-E Consumers Institute Broadens Wartime Services

A broad development program designed to make wartime services of the General Electric Consumers Institute available to still greater numbers of America's homemakers, is announced by H. L. Andrews, vice president of General Electric Company and maanger of the Appliance and Merchandise Department at Bridgeport, Conn.

In wartime, the laboratories, test kitchens and laundries of the Institute are proving more vital than ever, according to Mr. Andrews. A constantly growing number of homemakers, it is reported, are seeking advice and counsel on meeting those problems within the home, brought about by shortages and restrictions.

The development program planned for the G-E Consumers Institute will offer every homemaker up-to-minute information for the practical solution of wartime homemaking problems as they arise.

Copperweld Steel Co. Consolidates Two Southern Districts

The Copperweld Steel Company announces the consolidation of its former southwestern and southeastern districts into a new southern district under the supervision of Mr. E. B. Patterson, with offices at 1403 Sterick Building, Memphis, Tennessee. The new district comprises the states of New Mexico, Texas, Oklahoma, Louisiana, Arkansas, Tennessee, Mississippi, Alabama, Georgia, North Carolina, South Carolina, and Florida.

Southern district branch offices will be maintained in Dallas, Texas, and Atlanta, Georgia.

Wartime Lamp Bulbs

Due to wartime requirements, everything in the makeup of incandescent and fluorescent lamps has been changed except the tungsten filaments, according to a report by the Westinghouse Electric & Mfg. Co. The brass screw base has been replaced with brass-plated iron which on a million filament lamps saves about 9500 pounds of brass. Two small drops of solder formerly fastened the lead-in wires of filament lamps to the brass shell and consumed 60 tons of tin yearly. Now this tin is saved by use of a lead-silver alloy solder.

The fluorescent lamp saves metal by utilizing a new kind of glass. Originally made with glass containing lead oxide, manufacturing techniques have been changed to permit use of lime glass thus saving 179,000 pounds on a million average-size fluorescent lamps. At present, engineers are redesigning the base of the fluorescent lamp to provide a one-piece plastic assembly; the object is to save vital nickel now used in the collar.

Two New I.B.M. Directors

Charles A. Kirk and John L. Stainton have been elected directors of International Business Machines Corporation, filling vacancies caused by the deaths of Samuel M. Hastings and Edward Cornell.

Mr. Stainton is president of the Central Valley National Bank of Central Valley, New York. Mr. Kirk is vice president in charge of manufacturing of IBM.

Peerless Pump Appointment

Announcement is made by Peerless Pump Division—Food Machinery Corporation—of the appointment of Dan R. Rankin as acting chief engineer of the company. Mr. Rankin has been associated with Peerless for the past five years and previously was assistant to the chief engineer.

Westinghouse War Production Exceeds $500,000,000 in 1942

In 1942, more than $500,000,000 worth of war materials was manufactured by the Westinghouse Electric & Mfg. Co., according to a recent report by this company. An average of one full carload of war goods was shipped every 10 minutes—day and night.

War equipment produced has included electrical devices to aim guns, operate airplane and tank equipment, and drive ships. From its pro-

Manufacturers' Notes (Cont'd)

duction lines rolled millions of shells, bomb fuses, turbines and gears for ships, armor piercing shot, and plastic liners for helmets.

Among the many electrical engineering achievements now serving on the war fronts is the "walkie-talkie" pack radio. Weighing only 30 pounds, including battery, receiver, transmitter and antenna, this two-way communication set is carried on a combatant's back. An urgent message, such as a call for reinforcements, can be flashed as far as 10 miles on land by means of this outfit.

On sea where the range is somewhat greater, the new unit is used on convoy vessels to supplement ships' telegraph radio. Voiced information is flashed from one ship to another without the danger of the messages reaching enemy ears at a remote distance.

A.S.A. Sets Production Record

The American Standards Association has set a new production record for 1942, R. E. Zimmerman, president of the Association reported at a recent meeting of the Association. Work in the past 12 months, all of which has tied in closely with the country's war effort, has resulted in 73 new standards and 49 revisions of existing standards. In addition, 10 American War Standards requested specifically by WPB, OPA or some other agency were completed.

James Clarke Takes Westinghouse Post

James Clarke, for eight years a member of the accounting firm of Haskins & Sells, has been named assistant to comptroller at the Westinghouse Electric and Mfg. Company.

Mr. Clarke is a certified public accountant in Pennsylvania and Ohio and a member of the Board of Commissioners of the Sewickley, Pa., Water Works. He also belongs to the Pennsylvania Institute of Certified Public Accountants and the American Institute of Accounting.

Allis-Chalmers Appoints Manly

W. L. Manly has been named manager of the Allis-Chalmers feedwater treating department, according to a recent announcement.

To his new position Mr. Manly brings a vast amount of first hand knowledge of the all-important service problems in feedwater treating. Since 1940 he has also been conducting practical research on industrial feedwater problems.

With power plants operating at peak loads for war production, careful feedwater treating becomes increasingly important. In view of this, the Allis-Chalmers Akon service under Mr. Manly's direction, will be directed more intensively than ever toward solving industry's wartime feedwater problems.

Herrington Elected Director Army Ordnance Association

A. W. Herrington, chairman of the board of directors of the Marmon-Herrington Company, has been elected a director of the Army Ordnance Association, according to a recent announcement.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design and construction.

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